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# ONTARIO LABOUR RELATIONS BOARD REPORTS

**January/February 1997**





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# ONTARIO LABOUR RELATIONS BOARD REPORTS

A Bimonthly Series of Decisions from the  
Ontario Labour Relations Board

Cited [1997] OLRB REP. JANUARY/FEBRUARY

EDITOR: RON LEBI

Selected decisions of particular reference value are  
also reported in *Canadian Labour Relations Boards  
Reports*, Butterworth & Co., Toronto.



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CALL-A-CAB LIMITED; RE NORMAN THOMAS; RE RETAIL WHOLESALE CANADA  
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ONTARIO HYDRO; THE POWER WORKERS' UNION, CUPE LOCAL 1000 ("PWU"); RE  
THE ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION (EPSA), THE  
ELECTRICAL CONTRACTORS ASSOCIATION OF ONTARIO (ECAO), INTERNA-  
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**2953-96-R United Steelworkers of America, Applicant v. Burns International Security Services Limited, Responding Party v. International Union, United Plant Guard Workers of America, Local 1962, Intervener**

**Certification - Evidence - Practice and Procedure - Security Guards - Employer objecting to certification application brought by Steelworkers' union on ground that union admits to membership persons who are not guards - Statute requiring trade union to satisfy Board that no conflict of interest would result - Board concluding that rational and efficient conduct of proceedings make it appropriate for employer to call its evidence first**

**BEFORE:** *Bram Herlich*, Vice-Chair, and Board Members *S.C. Laing* and *R. Montague*.

**APPEARANCES:** *Robert Healey, H. Alden* and *B. James* for the applicant; *James B. Noonan, Michelle L. Dalos, Craig Mitchel* and *John Coletti* for the responding party.

**DECISION OF BRAM HERLICH, VICE-CHAIR, AND BOARD MEMBER R. MONTAGUE;**  
February 19, 1997

1. Further to the decision of the Chair dated February 4, 1997 in this matter, a hearing was convened before this panel to deal with certain procedural issues in order to facilitate an expeditious and economical disposition of this application.

2. After hearing the parties' initial submissions the Board heard their full submissions on the issue of which party ought to call its evidence first. After retiring to consider the parties' submissions a majority of the Board (Board Member Laing dissenting) delivered the following ruling orally:

The Board is persuaded that the rational and efficient conduct of these proceedings dictates that the employer call its evidence first, and the Board therefore so directs.

In coming to this conclusion we have not considered the fact that the parties agreed to a similar process in another proceeding. We have relied primarily on the fact that the knowledge as to why the employer has sought fit to raise an objection under section 14(4) is obviously within its knowledge and we think it is appropriate for the employer to inform the parties and the Board as to the specific nature of its concerns through the filing of particulars and the adducing of evidence.

We have also considered the fact that the union's task in this case (whether or not it bears the ultimate legal onus - an issue we don't decide now) appears to involve proving a negative and the prolongation of these proceedings by requiring the union to call its evidence first and to establish that no conflict of interest exists at hundreds of individual sites, is something the Board wishes to avoid, particularly when the employer could or should be able to identify with greater specificity the nature of its concerns regarding conflict of interest.

3. After delivering this ruling the parties advised the Board that they felt confident they could agree to a reasonable schedule governing the exchange of particulars and documents. The Board looks forward to being advised of the results of those discussions.

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**2461-96-R Brock University Faculty Association (Unincorporated #2), Applicant v. Brock University, Responding Party**

**Certification - Representation Vote - Union applying to represent bargaining unit of university faculty - Board rejecting university's request for mail-in ballot so as to permit faculty on sabbatical and on unpaid leave opportunity to vote**

**BEFORE:** *Christopher Albertyn*, Vice-Chair, and Board Members *S. C. Laing* and *J. Redshaw*.

**DECISION OF CHRISTOPHER ALBERTYN, VICE-CHAIR, AND BOARD MEMBER J. REDSHAW;** February 6, 1997

1. This is an application for certification.
2. On November 20, 1996 the Board ordered a representation vote.
3. The university explained that certain of its faculty members affected by this application were on sabbatical and unpaid leave and were unlikely to be present at the representation vote which the parties agreed should be held on the university's campuses on November 26, 1996. The university requested that those faculty members be permitted the opportunity to vote by mail-in ballot. The university was prepared to bear the administrative costs occasioned by the mail-in ballot. The faculty association opposed the request.
4. In the Board's decision ordering the vote, a majority of the Board decided not to grant the University's request for a mail-in ballot. What follows are the reasons for that refusal.
5. The university relied upon the Board's decision in *Halton Roman Catholic Separate School Board*, [1986] OLRB Rep. July 962. It argued that where the employment status of an employee is not in question, that employee should not be disenfranchised merely because their absence from the university coincides with the date on which the ballot is to be held. The slight delay in the final count of the ballot and the additional administrative tasks occasioned thereby should not, in the university's submission, defeat the entitlement to vote of employees who will be affected by the outcome of the vote.
6. When considering the university's submission, we have taken account of the following competing considerations. On the one hand, the Board considers the undesirability of accepting that, by force of circumstance, certain employees affected by the outcome of the ballot will be excluded from the vote through no fault of their own. They could participate and be counted by being given the opportunity of a mailed-in ballot.
7. On the other hand, the university's request must be considered in context. The principle which it invokes is that in all circumstances in which an employee is, by force of circumstance, to be away from the polling station, s/he should be entitled to a mailed-in ballot. The Board must consider what that would entail. It would mean that in virtually every certification (and, by extension, termination) vote, some employees would be entitled to a postal vote, whether they be on vacation, on sick leave, extended leave, maternity leave, paternity leave, sabbatical leave or unpaid leave or, indeed, not scheduled to work on that day. The university takes the position that the principle should apply to those persons whose employment status is not in dispute. But why should that be? Why should someone who is in fact an employee (as subsequently determined to be so by the Board), whose status is initially disputed, not also be entitled to cast a mail-in vote, the count of which would be suspended until his/her status were determined by the Board?



8. If a postal vote is to be permitted in all such cases, then the question may arise as to whether other forms of non-standard balloting should be permitted, such as advanced polls and perhaps proxy votes. If the Board were to pursue the route of creating a voting opportunity at any cost, then non-standard forms of balloting, besides mail-in votes, should perhaps also be sanctioned.

9. The impact of adopting the principle advanced by the university would be a massive additional burden upon the Board's administration, with which it simply could not cope. A plethora of non-standard forms of balloting and their frequent use would create an administrative nightmare for the Field Services division of the Board, which conducts the representation votes. However, this administrative concern is not the crucial consideration. The relevance of describing the anticipated administrative difficulties is on account of the impact they would have upon the Board's capacity to fulfill a central statutory mandate. If non-standard forms of balloting were routinely permitted, the effect would be a significant delay in the holding of representation votes. That effect is directly counter to one of the core features of Bill 7, that representation votes occur quickly so that the parties are faced with a minimum period of uncertainty and so that the potential for disputes to arise concerning conduct between the application date and the voting date is kept to a minimum.

10. The Board may, under section 8(5) of the Act, direct that a representation vote occur other than within 5 days of the date the application for certification was filed with the Board. The Board will make such a direction only in very limited circumstances, for example, where the parties agree, as in this case, to a later voting date. The Act prescribes quick representation votes for sound labour relations reasons. The legislature intends that the necessary uncertainty in the labour relations of those affected by a certification application and the potential for vote related misconduct are kept to a minimum.

11. Under section 8(1) of the Act, the Board is empowered to determine the voting constituency of those who will be eligible to participate in the representation vote. That power is akin to the power exercised by the Board under previous versions of the *Labour Relations Act* when it determined which employees would be included in the list for the purpose of the count to establish a union's representativity.

12. The Board exercised that power during the period from approximately 1950 to 1995, in non-construction certification applications, by applying the 30/30 rule. That rule excluded certain people from the count, although those persons were legally employees, but not actively at work during the period which the Board determined as reasonable in the circumstances. There were compelling labour relations policy reasons for making the exclusion, important among them being the Board's desire to give the parties a simple and clear "rule of thumb" by which to determine a difficult case and thereby avoid litigation as to who should, and should not, be entitled to be counted. In a sense competing democratic considerations were assessed and the Board concluded that the inclusion of everyone who had even a remote employment relationship with the employer would undermine another important democratic value, that certainty and finality follow expeditiously upon the expression of interests by those who were easily determined to be employees.

13. Similarly, for some considerable period prior to Bill 7, in the construction industry, the Board determined that the appropriate constituency for determining representativity was those employees at work on the application date. The rule that those at work on the application date has served sound labour relations purposes in the construction industry. Since Bill 7, the standard which informed that rule has continued to be applied. Those at work on the application date may participate in the vote, others may not. See in this regard the decision of the Board in *Ken Anderson Electrical Inc.*, (File No. 0550-96-R and 1001-96-U, dated September 18, 1996 unreported) [now reported at [1996] OLRB Rep. Sept./Oct. 846], particularly paragraphs 18 to 35, which explain the history and rationale for the Board's approach.

14. All of these rules for determining the voting constituency potentially have the effect of depriving some individuals who by another measure may be employees with the opportunity to have a say over whether they will be represented by a particular collective bargaining agent. But, in each instance, the Board determined that, in order to fulfill the statutory scheme for ascertaining a union's entitlement to be certified, the harm to the interests of those arguably, remotely or tenuously associated with the employer was outweighed by the assertion of the interests of those whose employment status was substantially unassailable, and who were immediately available to express their preference so as to enable the Board to give prompt effect to that preference.

15. In like manner, in this instance, the Board took account of the labour relations implication of necessarily delaying representation votes if the Board were routinely to authorize non-standard forms of representation balloting. The Board has had to balance the opportunity to vote with the union's entitlement to a quick vote, which is a peremptory requirement of the Act. The compromise reached is that which, in the Board's view, best fulfills the statutory scheme for determining a union's entitlement to be certified.

16. Besides the above considerations, once employees who cannot be present at the vote are routinely entitled to a mail-in or other non-standard ballot, the Board would likely be faced with a new range of potential litigation, determining such issues as to whether the absent employee was really unable to attend at the poll, and whether an absent person who wishes to cast a mail-in vote was really an employee. Of course, the question of an individual's employment status may be in issue regardless of the inclusion or non-inclusion of mail-in ballots. The inclusion of mail-in ballots merely increases the likelihood of status disputes because the group of persons included by mail-in ballots have an obviously peripheral relationship to the employer. The result of such litigation would be to effectively nullify or preclude the statutory direction for quick and determinative representation votes.

17. Hitherto, having regard to the above considerations, the Board has accepted that, although desirable to ensure the fullest participation in the ballot by the voting constituency, it will usually order mail-in votes only in very limited circumstances, for example where the nature of the work of the affected employees requires their dispersal far from the employer's premises where the vote would customarily be held. Only in such limited circumstances or where there are compelling reasons and where to hold the vote at the employer's premises or some fixed location gives no reasonable opportunity for a significant proportion of the voting constituency to cast its vote, or on the agreement of the parties, will the Board order a mail-in ballot. None of those circumstances apply in this application.

18. Finally, this is not the first time the Board has faced this question in this context. The issue of mail-in ballots has been raised previously in other certification votes in universities and in general the Board has taken the position that it will not order a mail-in vote for faculty absent on account of sabbatical or other leave.

19. Accordingly, the Board ruled that it would not grant the university's request for mail-in ballots.

#### **DECISION OF BOARD MEMBER S. C. LAING: February 6, 1996**

1. With all due respect to my colleagues, a Board decision which effectively thwarts employees' democratic rights can only, in my opinion, be characterized as fundamentally flawed.

2. The provisions of Bill 7 clearly set out a legislative intent which would have bargaining rights in certification applications determined through representation votes of *affected* employees.

3. There is no question that the employees at issue are *affected* employees. There is also no question that to deny those affected employees an opportunity to vote through a mail-in ballot was to deny them the opportunity to participate in the representation vote in which they had an equal interest with all other faculty who fell into the bargaining unit.

4. The myriad of potential cases where the Board may receive a request for a mail-in ballot are unnecessarily canvassed at paragraph 7 of the majority decision. What is germane to this request are the facts of this case.

5. In the circumstances of this case, there exists no practical administrative inconvenience to the Board. The university was to provide the necessary address labels and lists which would have allowed the Board to conduct the mailing.

6. It is incumbent upon the Board to ensure that all affected employees (if practically possible) are given the opportunity to participate in a representation vote. As such, in this case, those faculty on sabbatical and leave ought to have been permitted to vote through a mailed-in ballot.

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**3599-95-R** Norman Thomas, Applicant v. Retail Wholesale Canada Canadian Service Sector, Division of the Untied Steelworkers of America Local 1688 The Ontario Taxi Union, Responding Party v. **Call-A-Cab Limited**, Intervenor

**Practice and Procedure - Termination - Timeliness - Board inquiring into jurisdictional challenge, including timeliness objection, before directing representation vote in termination application - Applicant in termination application apparently filing application without first delivering copy to union - Application sent by registered mail on last day of "open period" and received by Board two days later - Applicant offering no good reason for Board to relieve against application of Rule 43o of Interim Rules or to treat application as filed on date that it was sent by registered mail - Application dismissed as untimely**

**BEFORE:** *Pamela Chapman*, Vice-Chair, and Board Members *R. M. Sloan* and *D. A. Patterson*.

**APPEARANCES:** *Donald White* and *Norm Thomas* for the applicant; *Brian Shell*, *Marie Kelly*, *Dan Garvey* and *Gary Cummings* for the responding party; *Mike Donnelly* for the intervenor.

**DECISION OF PAMELA CHAPMAN, VICE-CHAIR, AND BOARD MEMBER D. A. PATTERSON;** February 5, 1997

1. The applicant has applied to the Board under section 63 of the *Labour Relations Act, 1995* (the "Act") for a declaration that the responding party no longer represents the employees in the bargaining unit for which it is the bargaining agent.

2. In a decision dated February 1, 1996, the Board outlined two challenges made by the responding party to the Board's jurisdiction to order a vote in this matter, and directed that an oral hearing be held to hear argument concerning these objections.

3. At the hearing in this matter on February 13, 1996, a majority of the panel dismissed the application with reasons to follow. The following are our reasons for that decision.



**THE FACTS**

4. The facts in this matter were not generally in dispute, and were set out in the decision of February 1, 1996 as follows:

- (a) the collective agreement between the union and employer was effective from January 8, 1994 to January 7, 1996;
- (b) on November 1, 1996, a Conciliation Officer was appointed;
- (c) on January 3, 1996, the applicant sent to the Board by registered mail an application to terminate bargaining rights on Form 17. This application was not delivered by the applicant to the other parties;
- (d) the collective agreement expired on January 7, 1996;
- (e) the Board received the application on Form 17 on January 9, 1996;
- (f) on January 10, 1996, the Board issued an endorsement directing the applicant to file its application on Form TA-6 and to deliver it to the other parties within four days after receipt of the decision;
- (g) on January 17, 1996, the applicant attempted to deliver the application on Form TA-6 to the other parties by facsimile transfer. The employer does not dispute having received a copy of the application on that date. The union, however, has produced a copy of the facsimile transmission which it received, which does not include a copy of the application. The applicant has produced a copy of the facsimile confirmation sheets which were produced after they completed two separate transmissions to the union on January 17, 1996. One is an error report, which suggests that the first transmission of seven pages was not successfully completed. The second report appears to indicate that 14 pages were subsequently transmitted. At the hearing of this matter, counsel for the applicant acknowledged that the facsimile transmission was not complete;
- (h) on January 23, 1996, the Board delivered to the union, by facsimile transfer, a copy of the application originally filed on Form 17. This material was sent pursuant to a request by the union for a copy of the application; through inadvertence the application as originally filed was sent to the union rather than the application filed on Form TA-6 on January 9, 1996;
- (i) on January 24, 1996, the union and the employer filed responses with the Board.

5. At the hearing, counsel for the applicant was invited to provide an explanation for the failure by the applicant to comply with the Act and with the Board's Interim Certification and Termination Rules by delivering a copy of the application to terminate bargaining rights to the responding party and the intervenor employer prior to filing it with the Board. No explanation was provided other than inadvertence.

## THE ISSUES

6. As noted above, the responding party raised two challenges to the Board's jurisdiction to order a vote. First, the responding party asserted that the application was not delivered to it as required by section 63(3) of the Act and/or by Rule 43bb of the Board's Interim Certification and Termination Rules. In this regard, it raised two concerns: (1) that the application was not delivered prior to filing with the Board; and, (2) the attempt by the applicant to deliver a copy of the application by facsimile transmission to the responding party after filing with the Board was unsuccessful, with the result that the responding party did not receive a copy of the application until January 26, 1996, pursuant to a direction by the Board on the previous day. The responding party took the position that these deficiencies should result in a dismissal of the application, or at least call into question the application date assigned to the application by the Board.

7. Secondly, the responding party asserted that the application was not timely pursuant to sections 63(1) and 67(2) of the Act, as it was not filed prior to January 7, 1996, the date on which the collective agreement expired.

8. In response to these objections, the applicant asked the Board to apply Rule 22 to relieve against the failure to comply with Rules 43bb and 43o of the Interim Certification and Termination Rules. The applicant noted that the Board had already granted leave to deliver the application subsequent to filing with the Board through the endorsement dated January 10, 1996, and that the applicant's failure to effect this delivery was an error made despite a *bona fide* attempt to do so. With respect to the timing of the application, the applicant asked that the Board treat the application as having been filed on the date on which it was sent by registered mail, January 3, 1996, as would have been permitted pursuant to the Board's Rules of Procedure prior to the promulgation of the interim rules on November 16, 1995. Rule 43o of the interim rules provides that documents are treated as filed on the date on which they are received by the Board.

## THE DECISION

9. It was not disputed that, in order to be a timely application for termination, the application in this matter had to have been filed with the Board by January 7, 1996. It was in fact received by the Board on January 9, 1996, although the union argues that it was not properly filed as it had not yet been delivered to the other parties as required by the Act and the Rules. Leaving aside the issues concerning delivery, however, the application was not filed in a timely fashion unless we accept the applicant's argument that the application should be treated as having been filed on the date on which it was sent by registered mail.

10. Rule 43o of the Interim Certification and Termination Rules provides as follows:

43o The date of filing is the date that a document is received by the Board. However, in the construction industry, if an application is sent by Priority Courier, the date of filing is the date on which the application is sent (as verified by the Post Office).

11. The previous Rule dealing with the date of filing was Rule 8, which provides as follows:

8. The date of filing is the date a document is received by the Board or, if it is mailed by registered mail addressed to the Board at its office at Toronto, the date on which it is mailed, as verified in writing by the Post Office. However, the date of filing in cases brought under sections 11.1, 41, 73.1, 73.2, 92.1, 92.2, 93, 94, 95, 126 and 137 of the Act is the date the document is received by the Board.

12. This Rule was clearly superseded with respect to applications for certification and termination by the Interim Certification and Termination Rules promulgated on November 16, 1995. Rule 43i of the interim rules provides as follows:

43i These Rules amend the Board's Rules of Procedure, which continue to apply, except to the extent that they conflict with these interim Rules. These Rules apply only to applications for certification and to applications for termination of bargaining rights filed on or after the day on which these Rules come into effect and Rules 43 to 56 do not apply to those applications.

13. The rationale for Rule 43o is apparent from a reading of the other Rules relating to certification and termination applications, and from a reading of Bill 7, which brought into effect the *Labour Relations Act, 1995*. The Act, and the new rules which were put into place to implement the changes it contained, creates an entirely new regime for certification and termination applications, where representation rights are to be determined by the speedy holding of votes in virtually all cases. As a result, the interim rules reflect the need to quickly process certification and termination applications in order to meet in most cases the legislative mandate of fifth-day votes. As well, the legislation provides (in section 63(3) of the Act with respect to termination applications) for the delivery of applications to responding parties *before* filing with the Board, unless the Board establishes rules to relieve of this requirement (as the Board has done with respect to applications in the construction industry). In this context, the use of registered mail to deliver applications to the Board is quite simply unworkable, as is the assigning of application dates to any date other than the date material is received at the Board. If the latter were permitted, the Board would in many cases not even be aware of the existence of applications filed in this manner within five days after the date of filing, which is the date on which votes are to be held unless the Board directs otherwise.

14. Rule 43o also makes sense in light of the final sentence of the previous Rule 8, which already prohibited the fixing of application dates by registered mail filing in various types of time-sensitive matters. The effect of Rule 43o is essentially to add certification and termination applications in non-construction matters to this list of expedited proceedings.

15. The applicant asks that we relieve in these circumstances from the strict application of Rule 43o, but offers no reason for this request, other than the obvious fact that the application is untimely unless it is treated as having been filed on an earlier date. This is not a case where the applicant can reasonably plead ignorance of the changes in the Board's rules as an excuse for non-compliance. The applicant was represented in its filing by competent counsel who had an obligation to inform himself of the law and of any rules governing such applications to the Board. A review of Bill 7, which was proclaimed in effect on November 10, 1995, almost two months prior to the filing, would inevitably have led to the conclusion that the rules governing termination applications must have been changed, if only because of the wording of section 63(3). The Board's Interim Certification and Termination Rules were available at the Board's offices beginning on November 16, 1995, were mailed to those on the Board's mailing list that same day, and were announced in the November 1995 issue of Highlights. In these circumstances, there is little excuse for the manner in which the applicant commenced the application at the beginning of January 1996.

16. For all of these reasons, the majority of the panel concluded, Board Member Sloan reserving his decision, that it was not appropriate to treat the application as having been filed on January 3, 1996, the date on which it was sent by registered mail. As January 9, 1996 is the earliest date on which it can be considered to have been filed, in which case it would still be untimely, it is not necessary for us to determine whether or not the receipt of the application on that date was adequate to constitute filing, given the deficiencies in delivery to the other parties, and we thus decline to consider the other arguments made by the union.



17. As the application was not filed in a timely fashion pursuant to sections 63(2) and 67(2) of the Act, it was dismissed.

**DECISION OF BOARD MEMBER R. M. SLOAN:** February 5, 1997

1. I dissent from the majority decision.
  2. For the Board to deny the employees their legitimate rights under the Act on a mere technicality is not only unfair but in my view unjust.
  3. How can the majority take such a narrow view of “filing” dates when at the very period in which the instant application was filed, the Board was still in the process of formulating its new rules and there was much indecision within the Board itself, let alone in the outside communities.
  4. To penalize a group of employees on a minor technicality under the circumstances of this case cannot but diminish their view of the Board with respect to applying the rules in an even-handed manner.
  5. I would have, without hesitation, ordered a termination vote.
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**4366-94-OH Ruth Kidane, Applicant v. Centro Donne Inc., Responding Party**

**Health and Safety - Applicant working as counsellor in health clinic and asserting that excessive workload and/or work-related stress should be construed as a hazard under the *Occupational Health and Safety Act* (OHSA) - Applicant alleging that she was fired for engaging in work refusal - Board concluding that applicant had no right to refuse work under OHSA and that decision to terminate her employment not motivated in any way by having engaged in work refusal - Application alleging contravention of section 50(1) of the Act dismissed - Board also declining to exercise its discretion under section 50(7) of the Act to modify penalty in absence of good policy reason to interfere with proportionate employer response to applicant's conduct**

**BEFORE:** *M. A. Nairn*, Vice-Chair, and Board Members *R. M. Sloan* and *C. McDonald*.

**APPEARANCES:** *Linda Vannucci-Santini* for the applicant; *T. Hawtin* for the responding party.

**DECISION OF THE BOARD;** February 6, 1997

1. By decision dated July 17, 1996 this application was dismissed with reasons to follow in due course. We now provide those reasons.
2. This complaint was filed under sub-section 50(1) of the *Occupational Health and Safety Act* (the “OHSA”). It alleged that Ms. Kidane was terminated from her employment at Centro Donne Inc. (the “Centre”) for exercising her rights under that Act, specifically, that she was fired for engaging in a work refusal. By way of remedy, Ms. Kidane sought reinstatement to her position of Black Counsellor with the Centre with compensation and other damages. In addition she sought an order redistributing the work of serving uninsured (“non-OHIP”) black clients to other counsellors. This remedial request in many ways really summarizes and represents one fundamental difference between the parties in respect of Ms. Kidane's performance at work, and its significance will become clear.

3. The Centre is a non-profit, publicly funded, women's health clinic. Its main funding is through the Ministry of Health. In addition it receives certain funding from the City of Toronto. Its mandate is to provide care to women who are outside the mainstream health service network in respect of women's reproductive issues, primarily family planning issues. The clients are primarily immigrants. Language and cultural barriers make it difficult for them to find suitable and supportive care. The Centre provides services including family planning counselling, abortion referrals, and testing for reproductive health problems. It provides six hours of clinic time per week at the Centre where clients can be seen by a doctor and reproductive medical needs for testing, treatment or referrals are assessed. It also operates a mobile clinic that attends at factories and other workplaces. It also performs community outreach work and educational workshops. These services all focus on reproductive health.

4. The Centre is staffed by six counsellors, a Health Education Coordinator, an Administrative Coordinator and an Administrative Assistant. The counsellors are organized according to a defined community served; Italian, Portuguese, Vietnamese, Chinese, Spanish, and Black.

5. The Centre operates as a collective. There is a volunteer Board of Directors (the "Board") that is ultimately responsible to the funding sources. The day to day operation of the Centre however is dealt with by the employees themselves. Decisions concerning the operational needs of the Centre are made through meetings of the staff both formally and informally. Although perhaps unusual from a traditional, hierarchical, human resource management standpoint, the Centre has operated in this fashion since 1975, apparently quite successfully. The staff is comprised of persons who feel strongly about the work they do and the service they provide. It is axiomatic but requires stating that this kind of structure requires that all involved be willing to work together and be willing and able to communicate with each other in order for the structure to survive.

6. Ms. Kidane was hired in February 1992 as part of a settlement of a human rights complaint that she had filed in 1986. She had apparently made application for the position of Italian counsellor. The settlement was that she be hired for the position of Black Counsellor. A job description was made available to her and she accepted the job. Fundamental to that job was the counselling of black clients regardless of their country of origin and regardless of their OHIP status.

7. On September 9, 1994, Ms. Kidane engaged in a work refusal whereby she refused to see any clients who did not have OHIP. In her refusal she stated:

As reproductive health cannot be separated from socio-economic conditions of women, dealing consistently with multiple problem clients without any resources has been endangering my health. I suggest that all cases of non-insured clients be directed from the front desk to the community health centres.

8. On March 1, 1995, the Centre terminated Ms. Kidane's employment and this complaint was filed. The Centre asserted that the decision to terminate Ms. Kidane's employment was based solely on her work performance and her inability or unwillingness to work with the staff.

9. Ms. Kidane complained that she was terminated from employment for engaging in the work refusal. The essence of her work refusal was that the work of counselling black clients who have no OHIP coverage, specifically, having to negotiate with other services for appropriate referrals or the provision of care, is stressful. These clients may face a broader range of problems than those with OHIP, most obviously the issue of having to pay to receive health care services or find the service at a reduced or waived fee. These clients are also mostly English-speaking. Ms. Kidane's complaint is that she refused to see clients without OHIP, advising the Centre that it caused her stress, creating an unsafe work environment, and that she was fired for engaging in that refusal.

10. In her evidence Ms. Kidane was clear that as far as she was concerned, there were no other workplace or other causes of the alleged stress that caused her to engage in the work refusal. Ms. Kidane refused to see clients who would otherwise fall within her caseload if they did not have OHIP coverage because she believed that negotiating on their behalf caused her stress.

\* \* \*

11. We heard lengthy evidence from nine witnesses, including both staff and Board members from the Centre. Ms. Kidane then testified on her own behalf. On the issue of credibility we were more than satisfied that the witnesses testifying on behalf of the Centre were sincere and did their best to recall events honestly and without malice. It was apparent that many of the staff members were extremely frustrated by their experience with Ms. Kidane and some expressed anger with her. None were surprised by her application. It was, in their experience, entirely consistent with Ms. Kidane's way of dealing with things. To them it represented a continuing attempt to abuse real rights in an attempt to manipulate the Centre to her own wishes; to seek out a third party to impose a solution rather than trying to address any issues directly, sharing a portion of the responsibility for them. It was also apparent that the Centre's Board was inexperienced in human resource management. It is an organization that relies on volunteer guidance and decision-making.

12. Ms. Kidane was described by witnesses as having an arrogant demeanour, of belittling or being unappreciative of the work done by others at the Centre. That description was, in our view, confirmed by Ms. Kidane in the giving of her evidence. Whether arrogance, an intense defensiveness, or an inability to see the events from a different perspective, the overwhelming impression she left with the panel was that she took little if any responsibility for the work environment of which she complained. Yet she did not seriously dispute many of the legitimate concerns raised by the Centre. It appears that Ms. Kidane was never happy with the parameters of her job, that she sought to change those parameters and in doing so, neglected the primary work of her position and alienated her colleagues.

13. Ms. Kidane was hired in February, 1992. Without exception it seems, the first months of her employment were positive and a number of the witnesses indicated that they were very impressed with her diligence. However in November, 1992, Ms. Kidane prepared a self-evaluation, which she presented to the Board for review. This evaluation was the first in a series of events that made relations with the staff difficult. Ms. Kidane evaluated her work performance as generally very good and excellent. The evaluation then went on to question what were, in Ms. Kidane's words, "a lack of a common sense of directions and vision" within the Centre, outlining a number of issues that she felt needed to be discussed.

14. It is fair to say that the staff were completely surprised by the contents of the evaluation. Without reviewing the details here, it clearly and quite pointedly criticized the Centre and the other staff in a number of ways. Ms. Kidane then identified some "basic issues" that "need to be discussed in a 'global' political manner", asking that an effort be made by both Board and staff to discuss them.

15. The Centre seemed at a loss to know how to respond. The evaluation took issue with some very fundamental principles concerning the structure of the Centre and how it had organized its delivery of care. In it Ms. Kidane also acknowledged that she was already working outside the mandate of the Centre, expressing the view that clients cannot be "referred away".

16. Ms. Kidane expected a written evaluation of her job performance. It appears that the Board decided that it would be preferable to have the issues discussed at the collective level, given the implications for other staff. It is not clear how this was decided or communicated to Ms. Kidane, except that the then Administrative Coordinator, Ms. Rawji, did speak with Ms. Kidane indicating that the



matters raised had implications for other staff concerning their workload and how they were going to work together. Ms. Kidane, in a letter to Ms. Rawji in December 1992, insisted that the Board provide her with a written job performance evaluation prior to discussing the issues. This formal insistence and the corresponding refusal to discuss the issues raised, sowed the seeds of mistrust. There was no indication that the criticisms had been precipitated by any event at the Centre. The issues came about simply because they were identified by Ms. Kidane as the areas creating frustration for her in her work.

17. In her cross-examination Ms. Kidane seemed to suggest that in December 1992, after her evaluation, there was no need for a meeting because there had been agreement to alleviate her caseload. There was no evidence of any such agreement and we find it extraordinary that Ms. Kidane would draw such a conclusion. While the staff evidenced a willingness to try and cooperate no specifics were determined. Ms. Kidane clarified a remark from her examination, that Ms. Rawji had a hostile attitude toward her, to mean that Ms. Rawji had given her the impression that there was some hostility among the staff as a result of her evaluation. She acknowledged that Ms. Rawji offered to try to mediate but Ms. Kidane was not prepared to “enter into [an] arena of hostility”. Ms. Kidane stated she felt the staff were not paying attention to her concerns because they didn’t see her view, but agreed it was possible that they did not agree with those views. She acknowledged that as early as December 1992 the environment was not harmonious.

18. One of the key issues raised by Ms. Kidane was her concern or belief that clients ought to be differentiated on the basis of language; that clients were primarily interested in language affinity. She argued that the other counsellor positions were divided by language not race, that the black counsellor position was the only one so described. Apart from being required to deal with unfamiliar cultures, she more fundamentally raised the issue of whether this division of work represented an inclusive multiracial approach or was one that created inappropriate divisions. Ms. Kidane felt that English-speaking clients could be seen by any of the counsellors.

19. On the other hand the Centre believed and had operated from the premise that if it could provide a counsellor of the same race to a client then an affinity arose and the necessary trust was more readily established. There is no doubt that the “black community” captures a broad description. What was referred to as an “ethno-specific” form of service delivery has also applied to other communities, such that the Chinese counsellor, for example, is from that community, broadly defined, notwithstanding that different languages and cultures may fall within the description.

20. It was not apparent to us that there is any “right” answer to this question, given the fact that the Centre only has six counsellor positions which must in some description cover the vast range of language, culture, and race served. Nor were these lines carved in stone. The Spanish counsellor sees Spanish speaking clients including blacks, from a wide range of cultures. Other counsellors did see black clients on a regular basis and the counsellors were willing to and did share workload as required.

21. This represented a fundamental difference between the Centre and Ms. Kidane. She wanted the Centre to change; apparently at least partly in response to her own philosophical views as to the more appropriate means of care delivery, and as a means to alter her workload. It was the case that the majority of non-OHIP black clients were English-speaking, and that by later refusing to see these clients Ms. Kidane was, in her own way, effecting at least part of the change to the organization that she sought. It is for this reason that we are of the view that her remedial request confirms that she was in fact seeking a reorganization of the work, not only to rewrite her job description, but to alter the very structure of the organization.

22. This issue arose out of the evaluation in November 1992. It is in that context then that the remaining term of her employment was played out.

\* \* \*

23. The December 1992 letter to Ms. Rawji caused some discussion among members of the Personnel Committee, which resulted in a letter dated March 17, 1993 to Ms. Kidane. It advised her that the evaluation process was being put on hold until a review of the current structure and policies of the Centre was complete. The meaning of this was not clear. The Personnel Committee is comprised of both Board members and staff. The uniqueness of the Centre's structure was evidenced by the fact that at the time of these events, and up to December 1994, the staff were represented by a bargaining agent, yet at the same time participated in discussions with the Board concerning personnel matters. The staff had no authority to formally discipline a co-worker. However they did feel entitled to raise any concerns with a co-worker directly and to thrash out any solutions collectively.

24. In May 1993, Ms. Kidane wrote to the Board about the fact that she had received no response to her evaluation or request for direction from the Board, and that it was now a matter of "extreme urgency" that she be given clear guidance in priority setting. That same day Ms. Kidane had received a memo from Ms. Rawji asking that she make every effort to attend staff collective meetings and reminding her that attendance at the meetings was compulsory.

25. In June 1993 Ms. Kidane and others attended a Board meeting. At that time Ms. Kidane's request for direction in respect of her workload was discussed. The minutes of that meeting indicate that Ms. Kidane provided statistics of the number of clients that she had seen since she began working at the Centre and that most were without OHIP coverage. The other staff took issue with what appeared to be Ms. Kidane's suggestion that her caseload was considerably higher than other counsellors. Although Ms. Kidane testified that the numbers were provided merely to show the ratio of OHIP to non-OHIP clients in the black community, that was not made clear at the time.

26. Ms. Kidane identified other problems that her clients faced. These were problems that were encountered by the other staff in varying degrees on an ongoing basis. The result of that discussion was a decision that Ms. Kidane should raise the issues at the staff collective level in an attempt to devise solutions and share strategies to meet the needs of the clients within the mandate of the Centre and within the resources available. It was apparent from the evidence of other counsellors that they saw such discussion as a fundamental aspect of their ongoing work as they all, at various times, encountered problems in trying to serve clients with multiple problems. Although different communities presented different kinds of problems, problems were inherent to the work. The job of the counsellor was precisely to help the client overcome those problems that fell within the mandate of the Centre.

27. Ms. Kidane was on vacation to Spain and Portugal for four weeks in July 1993. On her return in August 1993, without speaking to the Board or to staff, Ms. Kidane entered a note in the clinic appointment book, stating she was not to get any new clients. She confirmed this in speaking to staff. The other counsellors were therefore required to see those new clients and their workloads accordingly increased. The counsellors took issue with Ms. Kidane's representation of her caseload, causing a further rift in their relations.

28. The minutes of a meeting of both Board and staff on November 17, 1993 set out the state of affairs at that time. With the exception of Ms. Kidane all were of the view that any issues regarding work functions and performance should be referred to the Personnel Committee. We note that this did not appear to be designed as a mechanism to "gang up" on Ms. Kidane. Rather it appears to have acknowledged that relations were already very difficult, but also reflected the Centre's strongly held view that the group must be able to communicate and work out problems together in order to meet the needs of the clients and ensure a satisfactory work environment for all.

29. There is no doubt that the staff were extremely frustrated by Ms. Kidane's unilateral action in refusing, as they saw it, to perform a fundamental element of her job, while at the same time continuing to engage in other activities less vital to the Centre (which concern we review later.) The minutes make clear that Ms. Kidane, present at that meeting, was aware that others felt she was evading her responsibilities and doing "what she liked", resulting in an inequitable distribution of the workload.

30. Ms. Kidane did not agree to the proposal that matters be discussed at the Personnel Committee. She wanted external mediation to become involved. The Centre did not have the necessary funds. Whether or not Ms. Kidane indicated she would file a grievance, all agreed that Ms. Kidane could have outside representation with her if she wished. Ms. Kidane's refusal to discuss the issues was again seen as an attempt to avoid responsibility. From the point of view of the staff, Ms. Kidane had raised fundamental questions about the structure of the Centre and its delivery of service because she found it to be difficult work, and had then refused to accept advice in respect of setting priorities and refused to engage in discussion with the people then affected. We note that although Ms. Kidane complained that her work was stressful at this time the provisions of the OHSA were not raised.

31. In 1992-1993 in addition to the caseload requirements, the Centre went through two physical moves, first to temporary quarters and then to a new permanent address. As a result, any evaluation process, the development of a personnel policy or longer term planning issues took a back seat to the more immediate concerns of the Centre.

32. We heard evidence of examples of other problems. Following the move Ms. Kidane took time to decorate her office, as did all the staff. However, Ms. Kidane also painted her desk and took time to decorate about thirty-six magazine boxes with decorative paper to create a filing system for her papers. She asserted that she did this while taking calls. From the staff's point of view it didn't really matter, it was taking time away from "real" work or meant she wasn't focusing on that work. Ms. Kidane agreed that during the time it took her to sort her materials for filing she would not take calls from anyone, requiring others to take messages or deal with the call instead. There was an occasion where Ms. Kidane had removed the communal kettle from the kitchen area and had taken it to her office. There is no doubt that Ms. Carvalho, another counsellor, lost her temper and demanded its return. Ms. Kidane felt she was justified in her action because she asserted others had used water she had prepared. In Ms. Carvalho's view it was an inexcusably selfish act. Whatever the real basis for this latter event, these examples illustrate, in addition to a concern about setting priorities, the extent to which relations were deteriorating.

33. In December 1993 Ms. Kidane was four months behind in providing the statistics of her caseload. These statistics are to be provided by the fifteenth of each month for the preceding month's work. They form the basis of the Centre's ongoing funding applications and accounting. Ms. Kidane agreed that where there is public funding there is a need to justify the activities and that the statistics were the means to do that.

34. In January 1994 she was again late although she had been off sick for a week and had been on vacation in Cuba for two weeks over the Christmas break. In early July 1994 she provided a late and incomplete set of statistics for May 1994 which were not completed until August 24, 1994. Again she had been off sick for much of July. However, in August Ms. Kidane advised that she would be taking no calls on two named dates in order to complete her June statistics. To the Centre this was a grossly excessive amount of time for the task. On a review of the forms and information required, and even Ms. Kidane's evidence of what was required, this does not appear to have been an unreasonable conclusion. Ms. Kidane testified that she had to review many of the files in order to retrieve certain of the necessary information. From the Centre's point of view, this represented an inability to organize her



work and collect the information as the work was done and resulted in other staff having to field phone calls for her.

35. On February 7, 1994 the Personnel Committee met. The minutes of that meeting paint an extremely dissatisfied view of Ms. Kidane's work performance and ability to work with the other staff. As a result of that meeting a letter was sent to Ms. Kidane dated February 15, 1994 outlining the events leading up to the letter, enclosing a copy of the minutes of the November 17, 1993 meeting and the February 7, 1994 meeting, and setting out expectations with respect to her work performance. That letter is framed as a warning and advises Ms. Kidane that, absent improvement she may be subject to further discipline. The authority of the Personnel Committee to issue a "warning" is not clear. In any event Ms. Kidane filed a grievance alleging that she had been disciplined without just cause.

36. Some time in late February or March of 1994 it appears that Ms. Kidane began to see at least some new clients again, apparently at least in part as a result of advice from her union representative. She agreed that as of February 1994 she was aware of the Centre's concerns about her work performance. Also in February 1994 she had been told not to engage in mental health counselling as that was outside the mandate of the Centre and she was also not properly trained for it; matters which could put the Centre in some jeopardy either in respect of funding or legal liability.

37. We heard a considerable amount of evidence about specific occasions during 1993 and 1994 where certain members of the collective dealt with Ms. Kidane in writing either for fear their words would be misinterpreted or simply because she was unavailable to speak to. It is not necessary to review those - a number of notes and memos were filed as exhibits to these proceedings. Ms. Kidane interpreted these memos and notes as a form of harassment. They discuss problems that arose with client communications because Ms. Kidane was either unavailable or her files were unavailable or incomplete, or other problems with coordinating Ms. Kidane's involvement in other aspects of the Centre's work. In a summary way that material evidences small but repeated communication problems that existed with Ms. Kidane on a day to day basis which, apart from the issues raised in the communications, took time, were resented by staff, and contributed to the deterioration of her relationship with staff.

38. We also heard evidence about participation in outside activities. The Centre permitted counsellors to involve themselves in outside but related activities. However counsellors were expected to limit those approved outside activities to one or two meetings per month so as not to take too much time away from counselling and clinic work.

39. Ms. Kidane was involved in two outside activities over the course of her employment, the Toronto Birthing Centre ("TBC") and the Female Genital Mutilation Group ("FGMG"). Ms. Kidane was elected to the Board of the TBC in October 1992 and was on a subcommittee as well. Between January and June 1993 Ms. Kidane attended 17 meetings of the TBC and one meeting of the FGM. She acknowledged that in June 1993 the staff told her she was spending too much time with the TBC, including suggesting that it was causing her stress. Ms. Kidane also agreed she was told to curtail her outside activities in September 1993. In 1994, excluding her time off from work, she attended 18 meetings of the FGMG, averaging 2-3 per month.

40. Ms. Kidane initially testified that up to the end of 1993 she took compensating time off for this work, but not after. Later she testified that she took equivalent time off only for the early months of 1993. She justified her attendance and involvement on the basis that eventually she did not recoup the time from the Centre - that in effect she did it on her own time. Yet she recorded these activities in the "black book" at the Centre designed to keep track of hours throughout her employment. The Centre understood she would claim that time and made the point that if Ms. Kidane was experiencing stress it was quite possible that it was as a result of this additional activity. She responded by indicating that

outside activities did not cause her stress; that dealing with non-OHIP clients was the problem. There was no doubt however that the Centre had consistently asked her to reduce this activity and to set her client caseload as her priority.

41. These concerns of the Centre had to be considered in light of the fact that the counsellors work four days a week, six hours a day, for a total of twenty-four hours per week. The clinic took six hours of that time, leaving only eighteen hours per week to other activities. Many outside meetings took three hours which would quickly start to eat into the time available for client caseload work and the other activities of the Centre. In addition the staff received fifteen paid holidays a year, received a minimum of four weeks of vacation time and were entitled to two days off if they moved. Over the course of her employment Ms. Kidane moved twice, entitling her twice to that benefit.

42. There was early recognition by the Centre and the staff that Ms. Kidane's caseload was initially heavy. However, Ms. Kidane was unable to refute statistical evidence that showed that as time went on the number of clients seen by her decreased as did her participation in other aspects of the work of the Centre such as the mobile clinic, workshops and educational activities. Ms. Kidane's view of the staff was that they did not want to, nor did they, share work. Other staff were, however, seeing black clients. Although Ms. Kidane suggested that this was only while she was sick or on vacation, that view is not supported by the evidence.

43. The Centre saw 317 black clients in clinic in 1992. The other staff saw 129 of these clients mostly prior to or shortly after Ms. Kidane's arrival. Ms. Kidane saw the remaining 188 clients and approximately two-thirds of them were without OHIP. This occurred during a period of full attendance at work and no work refusal by Ms. Kidane. In 1993 there were a total of 182 black clients seen in the clinic. Ms. Kidane saw 92, the rest of the staff saw 90. In 1994, 138 black clients were seen in clinic. Ms. Kidane saw 55, the rest of the staff saw 83. Of those 83, 50 had no OHIP.

44. Of those 55 clients seen in clinic by Ms. Kidane in 1994, 37 had no OHIP. Given that after September 9, 1994 she refused to see clients without OHIP it would appear that in the four latter months of 1994, Ms. Kidane saw at most, 18 clients in clinic. Given that it would not be unusual to see three clients per clinic, it would appear that Ms. Kidane's clinic work over that latter part of 1994 was less than half of what could reasonably be expected, even accounting for her work refusal.

45. On May 20, 1994, June 22, 1994, and July 28, 1994 Ms. Kidane filed grievances. The complete record of grievances filed by Ms. Kidane was not before us. The grievance of July 28, 1994 however asserts that the employer had failed to provide safe and healthful conditions of work, and requested that the employer immediately correct those conditions.

46. Ms. Kidane had obtained a doctor's note from a Dr. M. Goodman dated July 5, 1994. That note stated that Ms. Kidane had been attending his office since May 12, 1994 "in regard to work-related stress". Dr. Goodman stated that he felt Ms. Kidane "would benefit from an absence from work for several weeks". Consequently Ms. Kidane was absent from work for most of July 1994.

47. Ms. Kidane was asked to provide a certificate of fitness on her return to work on August 2, 1994.

48. On August 12, 1994 the Board forwarded a letter to Ms. Kidane's union representative advising that it was willing to discuss a severance package for Ms. Kidane and was requesting a proposal.

49. Ms. Kidane saw Dr. Goodman on August 23, 1994 but did not obtain a certificate of fitness from him. She provided instead a letter dated September 2, 1994 from a Dr. A. Abelsohn. It stated that

Ms. Kidane had been a patient since 1987; that she had been seen “a number of times over the last 2 years with symptoms of stress” which required her to be off in July. He stated the “major persistent precipitating factor is her extremely stressful working condition”. That letter concludes by recommending that immediate attention should be given to reducing her workload and work stress, and that if this is not done, it could lead to further stress-related illness and disability.

50. A week later, on September 9, 1994 Ms. Kidane commenced her work refusal under the OHSA as outlined at the outset. On that same day she wrote to the Board concerning her grievances and her belief that she was the subject of continuing harassment, particularly from Ms. Carvalho, the Portuguese Counsellor.

51. There was an attempt to investigate the work refusal. Ms. Kidane objected to the union steward’s participation on her behalf so a union representative was contacted. A meeting was set for October 19, 1994 at which time the union representative, a representative from the Centre and Ms. Kidane were present. Ms. Kidane objected to Ms. Longobardi’s participation on behalf of the Board and consequently refused to participate at that time. Ms. Kidane felt that Ms. Longobardi, a Board member, had a conflict of interest as she “had not remained neutral” and she was a friend of a staff member who apparently disagreed with Ms. Kidane. Ms. Kidane believed, mistakenly in our view, that the employer representative’s role was to mediate the dispute.

52. The Board consulted and on October 21, 1994 wrote Ms. Kidane that in its view, her refusal to participate in the meeting was unwarranted. Further, the Board advised her that it had concluded that there was no basis for her work refusal and directed her to resume her full range of duties immediately, including the management of uninsured cases, or she would be subject to discipline. That letter expresses the view that Ms. Kidane had abused the provisions of the OHSA.

53. Ms. Kidane wrote to the Board on October 28, 1994 in response and on November 8, 1994 grieved the Board’s letter as a violation of section 50(1) of the OHSA. On December 15, 1994 the grievance was settled by the Centre agreeing to remove the letter from her file.

54. On January 20, 1995 Ms. Kidane’s other grievances, including the July 28, 1994 grievance concerning unsafe work conditions were settled without any change to the work conditions being agreed to by the Centre. The letter of February 15, 1994 was removed from Ms. Kidane’s file as part of that settlement. The Centre agreed that at the time of termination there was no discipline on Ms. Kidane’s file. Nor was it ever acknowledged or shown that Ms. Kidane had been the subject of harassment.

55. An investigation of Ms. Kidane’s work refusal was conducted on February 16, 1995.

56. On February 23, 1995 a Board meeting was held to discuss the fact that staff had come to members of the Board advising them that they could no longer work with Ms. Kidane. In their view Ms. Kidane was neglecting her primary responsibilities as counsellor, their advice with respect to setting priorities, had engaged in work outside the mandate, was completely unappreciative and would not acknowledge the fact that the staff had helped her with her workload even while it was declining. She was in their view, uncooperative, arrogant, would not attend staff meetings and the collective was at the point of breaking apart as a result. A decision was made by the Board at that meeting to terminate Ms. Kidane’s employment.

57. Ms. Kidane’s employment was terminated on March 1, 1995. In her lengthy cross-examination Ms. Kidane was unable to seriously refute the evidence of the Centre’s claim that she did not prioritize her work, did not participate as a member of the collective and that relations between the staff had seriously deteriorated long before her termination from employment. She did not accept any



responsibility for these issues; believing herself to be the victim of harassment and assigning blame elsewhere. She did not dispute the fact that the Centre had, in August 1994 and shortly before she engaged her work refusal, offered in writing to consider a severance package due to its concerns about her work and the effect on the Centre.

58. A report of the work refusal and investigation was prepared by a Board member dated March 2, 1995, finding that there was no health and safety basis for her work refusal. That report reviews some of the same factual information concerning the distribution of work at the Centre as was before the panel and specifically Ms. Kidane's non-OHIP caseload over the period of her employment. It also reviews the work of other counsellors in comparison.

\* \* \*

59. The only evidence that negotiating on behalf of non-OHIP clients constituted a risk to health and safety so as to engage the right to refuse that work under the OHSA was Ms. Kidane's own assertion that the work was stressful, causing her to experience symptoms of insomnia, loss of appetite, and memory loss. We can place no weight on the conclusions of either physician set out in the two documents referred to, which were provided to the Centre and filed with the panel.

60. There was a dispute during the proceedings concerning the relevance of and responsibility for calling medical evidence. By decision dated May 6, 1996 the panel concluded that the onus of calling the physicians in this case lay with the applicant. We made the point then that the reports were quite summary in nature and would be of limited value to the panel.

61. Conclusions as to cause and effect are complex and would require much greater consideration than those notes provide. Neither doctor spoke with anyone at the Centre. Ms. Kidane provided them only with her view of the situation. She agreed that she had described that situation to Dr. Goodman as one of being a victim of harassment by at least three of the staff and that the staff were hostile as a result of what she described as her request for help. She agreed that she has suffered from stress and depression in the past and that the symptoms she described were problems that she had experienced prior to her employment at the Centre. She attributed that earlier stress to the ongoing human rights complaint identifying it as a central theme in her life at that time.

62. Ms. Kidane showed Dr. Abelsohn the statistics that she had prepared of clinic visits in 1992, showing the number of clients with and without OHIP. We agree with the position of the Centre, as noted earlier, that it misrepresents Ms. Kidane's work at the Centre. Without explanation it would suggest that Ms. Kidane saw 333 black clients in the clinic in 1992 of whom 242 had no OHIP, and that Ms. Kidane was seeing a disproportionate number of clients in the Centre as a whole. In truth, those medical notes merely reiterate Ms. Kidane's own view of the circumstances without any separate inquiry or analysis. Further it is apparent that even Ms. Kidane did not limit her assessment of stress factors to dealing with non-OHIP clients - she refers to issues of harassment and hostility and overwork including OHIP clients.

63. In any event, Ms. Kidane chose not to call any other medical evidence and specifically relied on the two notes *not* for the truth of their contents but to set the context of Ms. Kidane's work refusal and to establish that they had been received by the Centre. In effect we have no evidence, other than Ms. Kidane's own assertion, that she suffered from any condition as a result of having to see clients without OHIP. We note that the other witnesses did not dispute that Ms. Kidane was under stress, but they attributed that condition to a wide variety of possible causes, factors both personal and work-related.

\* \* \*

64. Ms. Kidane relied on sections 43 and 50 of the OHSA, the relevant portions of which provide as follows:

43. (1) This section does not apply to a worker described in sub-section (2).

- (a) when a circumstance described in clause (3)(a), (b) or (c) is inherent in the worker's work or is a normal condition of the worker's employment; or
- (b) when the worker's refusal to work would directly endanger the life, health or safety of another person.

(2) The worker referred to in sub-section (1) is,

- (a) a person employed in, or a member of, a police force to which the *Police Services Act* applies;
- (b) a full-time, or a volunteer, firefighter as defined in the *Fire Departments Act*;
- (c) a person employed in the operation of a correctional institution or facility, a training school or centre, a place of secure custody designated under section 24.1 of the *Young Offenders Act* (Canada) or a place of temporary detention designated under sub-section 7(1) of the Act or a similar institution, facility, school or home;
- (d) a person employed in the operation of,
  - (i) a hospital, sanatorium, nursing home, home for the aged, psychiatric institution, mental health or mental retardation centre or a rehabilitation facility,
  - (ii) a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental handicap,
  - (iii) an ambulance service or a first aid clinic or station,
  - (iv) a laboratory operated by the Crown or licensed under the *Laboratory and Specimen Collection Centre Licensing Act*, or
  - (v) a laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service described in subclause (i) to (iv).

(3) A worker may refuse to work or do particular work where he or she has reason to believe that,

- (a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself; or
- (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part

thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker.

(4) Upon refusing to work or do particular work, the worker shall promptly report the circumstances of the refusal to the worker's employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

- (a) a committee member who represents workers, if any;
- (b) a health and safety representative, if any; or
- (c) a worker who because of knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them,

who shall be made available and who shall attend without delay.

(5) Until the investigation is completed, the worker shall remain in a safe place near his or her work station.

(6) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that,

- (a) the equipment, machine, device or thing that was the cause of the refusal to work or do particular work continues to be likely to endanger himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works continues to be likely to endanger himself or herself; or
- (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention continues to be likely to endanger himself, herself or another worker,

the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof.

(7) An inspector shall investigate the refusal to work in the presence of the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause (4)(a), (b) or (c).

(8) The inspector shall, following the investigation referred to in sub-section (7), decide whether the machine, device, thing, or the workplace or part thereof is likely to endanger the worker or another person.

Note: (sub-sections 43(9) - 43(13) have not been reproduced)

**50.-** (1) No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or



- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the *Coroners Act*.

(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened sub-section (1), the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board in which case any regulations governing the practice and procedure of the Board apply with all necessary modifications to the complaint.

(3) The Ontario Labour Relations Board may inquire into any complaint filed under sub-section (2), and section 91 of the *Labour Relations Act*, except sub-section (5), applies with all necessary modifications as if such section, except sub-section (5), is enacted in and forms part of this Act.

(4) On an inquiry by the Ontario Labour Relations Board into a complaint filed under sub-section (2), sections 104, 105, 108, 110 and 111 of the *Labour Relations Act* apply with all necessary modifications.

(5) On an inquiry by the Ontario Labour Relations Board into a complaint filed under sub-section (2), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to sub-section (1) lies upon the employer or the person acting on behalf of the employer.

(6) The Ontario Labour Relations Board shall exercise jurisdiction under this section on a complaint by a Crown employee that the Crown has contravened sub-section (1).

(7) Where on an inquiry by the Ontario Labour Relations Board into a complaint filed under sub-section (2), the Board determines that a worker has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances.

(8) Despite sub-section (2), a person who is subject to a rule or code of discipline under the *Police Services Act* shall have his or her complaint in relation to an alleged contravention of sub-section (1) dealt with under that Act.

Although referred to in the pleadings, limited argument was addressed to the application or relevance of section 25. Ms. Kidane asserted that the Centre had an obligation to take every precaution reasonable in the circumstances to ensure a safe work environment (see section 25(2)(h)). She asserted this could be accomplished by redistributing the work or referring all clients without OHIP to Community Health Centres. We will discuss this more later.

65. The Centre took the position that this matter was entirely outside the parameters of the OHSA. Counsel noted that the work refusal was limited to negotiating on behalf of non-OHIP clients, and that Ms. Kidane identified no physical condition or aspect or other element of the work that was an endangerment to her health. Counsel argued that in the circumstances Ms. Kidane could not be said to be acting in compliance with the OHSA or seeking its enforcement as required by section 50(1) as the stated refusal does not fall within what is contemplated in section 43 of the OHSA; this is not work about which Ms. Kidane had the right to refuse.

66. In the alternative, the Centre argued that its decision to terminate Ms. Kidane's employment was motivated solely by her work performance. Counsel reviewed her history of employment and

argued that, while Ms. Kidane may have felt that she was being harassed or persecuted, the reality was that she simply was unable to get along with the other staff. She was unwilling or unable to deal with the other members of the collective; a condition which deteriorated until it became necessary to terminate her employment.

67. Counsel noted that Ms. Kidane had been told to stay within the mandate of the Centre. She admitted she hadn't and she gave no indication that she would in the future. To the contrary she continued to take the position that clients could not be referred away. Counsel argued that while her personal goals for her clients may have been laudable, the other staff, many with greater experience, had counselled her with respect to what could realistically and appropriately be accomplished within the Centre's mandate and their own personal limitations. Further, her actions jeopardized the Centre as they raised potential legal and funding difficulties.

68. Counsel argued that Ms. Kidane complained that she was overwhelmed with work, yet the evidence was uncontradicted that over the course of her employment that workload decreased, and not only in connection with any refusal she might have been engaged in. She would not attend staff meetings although aware that they were mandatory, she engaged in uncooperative behaviour, her record keeping presented problems for other staff in assisting her clients, she was unwilling to assist in other general administrative responsibilities, and she was late in providing statistics of her work as required.

69. For many of the same reasons the Centre argued that if the Board considered the application of section 50(7) of the OHSA, it would be inappropriate to exercise any discretion in the circumstances. Reinstatement was not an appropriate remedy given the nature of the relationship between the rest of the staff and Ms. Kidane. Counsel noted that even if Ms. Kidane was suffering from stress as a result of negotiating on behalf of non-OHIP clients (which it did not accept), then a reinstatement order would only act to further that stress or a reorganization of the work would be required, affecting all the other staff by increasing their workloads.

70. Counsel for Ms. Kidane argued that the right to refuse existed in this case; that to exclude the application of section 43 in these circumstances would exclude a large portion of the working population from claiming the protection of the OHSA. She asserted that an excessive workload and/or work-related stress should be construed as a hazard subject to the OHSA, at least at the first stage of a refusal. She further asserted that if the objective of the OHSA is to prevent illness and injury then susceptible workers are entitled to protection even if the average healthy worker is unaffected.

71. Counsel for Ms. Kidane argued that once it was shown that Ms. Kidane felt a genuine concern for her health and safety she was protected by the provisions of section 50 of the OHSA. It was not for the Board to determine whether dealing with non-OHIP clients was in fact a hazard, but whether Ms. Kidane had reason to believe that it was. She asserted that Ms. Kidane was terminated from employment for engaging in the work refusal and for seeking enforcement of the OHSA.

72. In that regard counsel reviewed the timing of the termination in relation to the stage of the investigation and the initial work refusal in September 1994. She noted that the Centre had been told in July 1994 that Ms. Kidane was off sick due to work related stress and that it was open to the Centre then to dispute that conclusion and seek a further medical opinion. Counsel asked rhetorically if Ms. Kidane's performance had been unacceptable in the summer of 1994 when the severance package was offered, why wasn't Ms. Kidane let go then? The only further conduct of any note, leading to her termination, asserted counsel, was that Ms. Kidane had engaged in the work refusal. She asserted that if the staff were exasperated it was incumbent on the staff and Board to deal with the issues in a constructive manner, not respond with discharge.

73. Both counsel made reference to the evidence of Ms. Longobardi in connection with the Centre's motivation for the termination, which evidence we will deal with specifically later.

74. Counsel further argued that in the event that the Board found that the termination was not improperly motivated, then the Board still had to assess the penalty of discharge in light of section 50(7) of the OHSA. Whether or not there was a valid work refusal, counsel argued, there was a nexus between the actions of Ms. Kidane and her health and safety concern. Further, reinstatement was an appropriate remedy given that there was no formal discipline on Ms. Kidane's record at the time of discharge.

75. In reply the Centre noted that there was no evidence from which the Board could draw the conclusion that Ms. Kidane was a susceptible worker. It also noted that there was no evidence, except Ms. Kidane's own assertion, from which the Board could conclude that any stress that Ms. Kidane may have been suffering from, even assuming that to be the case, was something that had been caused by having to deal with non-OHIP clients.

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76. The Board's inquiry under section 50 of the OHSA is to determine whether the worker has been penalized for "acting in compliance" or for "seeking the enforcement" of the OHSA. The Board is not responsible for determining any safety issue - that is the responsibility of Ministry of Labour inspectors and, on appeal, an adjudicator. In cases where there is no work refusal the Board considers the worker's actions in order to determine whether the worker was "acting in compliance" or was "seeking the enforcement" of the OHSA. In *Imperial Oil Ltd.*, [1982] OLRB Rep. Apr. 580 a worker had been designated as a "competent person" to certify that his work area was safe. When the worker refused to issue a work safety permit based on stated safety concerns, the employer placed a disciplinary note on the worker's file. In directing that the disciplinary notation be removed from the worker's file, the Board recognized the worker's obligation under then section 17 (now section 28) of the OHSA to work in accordance with the OHSA and its regulations and to report to his employer any contravention of the OHSA and to report the existence of any hazard of which he knows. The Board went on:

25. ... in our view, it is inconceivable that the Legislature could ever have intended that a person in Mr. Frangis' position could be disciplined for an honest and bona fide exercise of his responsibilities under section 72 of the Regulation. As the "competent person" designated to satisfy himself and certify to the safety of the workplace, *it would be anomalous if the raising of a bona fide safety concern could result in discipline - even if he is wrong in his assessment of the situation.* On the contrary, it is our view that such concerns should be raised and resolved with his employer. *This does not mean that Mr. Frangis has a licence for insubordination. If his refusal were frivolous, vexatious or improperly motivated, the Act would not protect him, and in appropriate circumstances, a prolonged debate might well raise a doubt about an employee's motives. Nor does it mean that the designated individual is the last word on safety at the work site.* Another competent person could certify the safety of the situation (as could have happened here) and the lack of foundation for a refusal to issue a permit or the inability to comprehend or accept the advice of more experienced persons might well raise doubts as to the individual's competence and could be dealt with accordingly. *But in our view, Mr. Frangis was seeking compliance with the Act, and on the evidence his position cannot be characterized as frivolous.* A disciplinary response from his employer - and this is how Mr. Lingley characterized it - was uncalled for.

[emphasis added]

77. In *Commonwealth Construction Company*, [1987] OLRB Rep. July 961 the complainants were construction workers who asserted that they had been terminated for conducting safety inspections on the site of a new mill and for raising a variety of safety concerns. Their employer, a subcontractor on site, was engaged in piping, mechanical, and electrical work. The Board stated:



23. *Whether or not the safety problems raised by the complainants would in fact be violations of the Act is not a question for this Board to determine.* In our view, we have no jurisdiction under this statute except as is described in and circumscribed by section 24. [now section 50] Sub-sections 1 and 2 of that section restrict our consideration to whether workers have been disciplined, threatened, intimidated, or coerced because they have acted in compliance with the Act or regulations or because they have sought their enforcement. The authority to determine whether a particular machine, condition, or environment is in fact in a state that is unsafe and violates the Act has been given to others. Regardless of whether a working condition is in fact unsafe, *we must ask ourselves whether a worker was disciplined (or threatened, etc.) because he or she sought the enforcement of or because he or she acted in compliance with the Act. In that respect, we are satisfied that each complainant believed he was seeking the enforcement of the Act or its regulations in his raising of many of the complaints.* They were not raising these matters only to harass the respondent. That many of the conditions complained of might not be contraventions of the Act or regulations does not mean the complainants were not seeking the enforcement of the Act or regulations. *They are only required to have bona fide sought its enforcement,* not to have raised what are ultimately held to be violations.

[emphasis added]

78. In cases where there has been a work refusal, the Board has assessed the circumstances surrounding the work refusal in order to determine whether the worker was acting in compliance or was seeking the enforcement of the OHSA. In accordance with the terms of section 43, certain workers may refuse to work where they have “reason to believe” that the conditions in sub-section 43(3) (a)-(c) exist. The Board has referred to the worker as needing only a subjective belief at that first stage of the work refusal in order to trigger the refusal and the consequent investigation process set out in section 43 of the OHSA. Following an investigation the worker may continue to refuse the work if there remains an objectively sustainable belief that the work is unsafe.

79. In *Sidbec Dosco Inc.; Re Grant Elgaard*, [1988] OLRB Rep. December 1334, an employee working as a wire drawer refused to pull certain rod without a helper. The Board reviewed the process under section 43 of the OHSA in the face of a work refusal and commented:

29. The Board has long held that, initially, the test to be employed in determining whether an employee has reason to believe work is unsafe is a subjective test (see, for example the *Corporation of the City of Ottawa* [1986] OLRB Rep. June 798, and *Domtar Inc.*, [1988] OLRB Rep. August 780). The reason for such a subjective test is obvious. Safety of life and limb is important. Thus, where a safety concern is raised it should be investigated.

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31. ...we are satisfied on balance that Mr. Elgaard held the belief that the work was unsafe to perform without the assistance of a helper. In so doing we are particularly cognizant of the fact that, although he had already performed one of the “unsafe” acts (when he strung and pointed the rod without a “helper”), when Mr. Elgaard first approached the supervisor he was aware that over the course of the remainder of his shift he would be required to string and point the rod another three or more times. We therefore find that Mr. Elgaard has met the subjective test which precedes the tier-one investigation. He has fulfilled the first pre-condition of establishing his entitlement under s. 23 in so far as he communicated to his supervisor a belief that he was or would be, or a fellow worker was or could be, endangered if he performed the particular work to which he had been assigned.

• • •

36. ...This then brings us to the issue as to whether Mr. Elgaard had “reasonable grounds” to believe the work continued to be unsafe. In many cases the Board has held that this subsequent test is an objective one and has adopted the enunciation of the following test set out in *Inco Metals Company*, [1980] OLRB Rep. July 981 at paragraph 59 - (a case dealing with the predecessor legislation):

...This Board must ask itself whether the average employee at the workplace, having regard to his general training and experience, would, exercising normal and honest judgement, have reason to believe that the circumstances presented an unacceptable degree of hazard to himself or to another employee.

See also *Camco Inc.*, [1985] OLRB Rep. Oct. 1431 and *Corporation of the City of Ottawa*, [1986] OLRB Rep. June 798. The premise of the objective test in s.23(6) is that the investigation (including good faith dialogue or any steps taken to deal with the circumstances or take remedial actions where necessary) will likely have eliminated the source of the employee's fears. The test as to the reasonableness of the employee's belief becomes more onerous *because* of the dialogue, investigation and remedial action which has preceded it.

• • •

40. Past decisions of the Board have indicated that at no stage of the proceedings must an employee be proved correct regarding the safety of the work and his consequent work refusal. Generally the Board looks only to the reasonableness of the employee's view in light of the information available to the worker at the time. In *Inco Metals*, *supra*, the matter was put as follows: The ability of an employee to invoke the right to refuse work does not depend on whether there is in fact danger. The question is whether at the time the employee refuses to perform his work he has reasonable cause to believe that it is unsafe to do so. The fact that it may later be shown that there was no real danger at the time an employee refused to work doesn't mean that the employee was wrong in exercising his right under the Act. The events must be assessed in the light of knowledge available at the time that the employee refused to work.

See also *Imperial Oil Limited*, [1982] OLRB Rep. Apr. 580; *Wilco Canada Inc.*, [1983] OLRB Reports Oct. 1759 and *Domtar Inc.*, *supra*.

80. So too, for example, in *AMS Diamonds*, [1981] OLRB Rep. Nov. 1534 the Board concluded that a worker was terminated in violation of what is now section 50(1) notwithstanding the fact that a Ministry of Labour inspector came to the conclusion that the electro-plating work in question posed no significant danger to the worker. The worker had refused to perform work involving a potential exposure to hydrogen cyanide gas in circumstances where she believed the work set-up and ventilation to be inadequate. It was common ground that the gas was a toxin. In extreme cases, exposure was fatal.

81. In support of her belief the worker had obtained the views of three persons in the field, all of whom expressed concern about the way the work was being performed. She also had suffered dizziness and nausea and had sought medical treatment. That medical opinion, although later contradicted, suggested that she had been exposed to noxious fumes.

82. The Board stated:

13. To succeed in her complaint under the *Occupational Health and Safety Act*, the complainant must, as a first condition, *establish that she had grounds for concern about her safety*. She need not establish that she actually suffered some degree of cyanide poisoning....

21. Under the Act it was the complainant's first right to refuse to do the stripping work *if she had "reason to believe" that the physical condition of the work place was likely to endanger her*. We have no difficulty concluding, given the ill effects which she felt the day before and the medical diagnosis obtained, that she had grounds for that belief....

[emphasis added]

83. In *Barmaid's Arms*, [1995] OLRB Rep. Mar. 229 the Board concluded that:

(9) At the first stage of a work refusal, the employee need only have "reason to believe that" the workplace or part thereof is a danger to herself or another worker. The Board finds that Ms. Moore

did have reason to believe that serving the customer in question was a danger to herself and her co-workers. We wish to emphasize that we are not determining whether or not the customer in question really was a danger but only that Ms. Moore had "reason to believe that" he was....

84. The employer in that case did not deny that the complainant had been fired for refusing to serve the customer and that she had refused to serve him based on her stated belief that he was dangerous. The complainant was aware that the customer had engaged in a physical altercation with another female employee and she had witnessed him push a woman off a bar stool. She had also been advised that the customer had become abusive when a female employee had tried to take his drink away at closing time.

85. What is striking about the cases cited above is that the "hazards" involved create some potential for harm arising out of equipment, machinery, or the *physical* condition of the workplace, matters contemplated by sub-section 43(3). The hazard of which Ms. Kidane complains is negotiating on behalf of clients who do not have OHIP. It was clear from Ms. Kidane's own evidence, carefully reviewed in cross-examination, that the hazard she asserts is one that arises when she is required to obtain services at reduced or waived fees for these non-OHIP clients - it is the negotiating involved that she asserts gives rise to the health risk. She confirmed that dealing with the client is not part of the hazard - the hazard is engaging in the negotiations on their behalf.

86. We feel it necessary to be clear that the stress of which Ms. Kidane complains is not the hazard. Stress may very well be the result of being subjected to a workplace hazard, and may manifest with symptoms that are either physical, psychological or both. Stress is the consequence, and except for difficulties in assessing the myriad of possible factors to determine a causal connection to the workplace hazard, as is required for example by Workers' Compensation legislation, it seems little different from a fractured leg, respiratory distress, or lower back pain.

87. But the fact that one might suffer stress in the workplace does not necessarily mean that a workplace hazard is present. Nor does it automatically provide a right to refuse work. One may suffer stress because they are simply not suited to perform the work in question, they do not like their supervisor, or they have to travel long distances to and from work. The possibilities are endless. Unlike Worker's Compensation legislation, the OHSA does not look to injury. The OHSA focuses on the identification and/or existence of hazards.

88. We should also make it clear that this complaint is not about workload. Although Ms. Kidane refused to perform the work of serving non-OHIP black clients, she made it clear that she had been prepared to canvass black communities where the women would have OHIP (specifically she expressed interest in the Ethiopian and Somali communities), in order to expand her caseload in that way.

89. Section 43 provides a worker with the legal right to refuse to perform certain work and exists as an exemption or recognized explanation for conduct that would otherwise be characterized as insubordinate. That must be the starting point; the fact that absent section 43 (and absent the earlier common law and arbitral jurisprudence that has been codified by the OHSA) refusing to perform work is generally an act of insubordination warranting discipline. Section 43 provides the right to refuse where the worker has reason to believe that the conditions set out in any of sub-section 43(3)(a)-(c) exist.

90. In *Baltimore Aircoil of Canada*, [1982] OLRB Rep. March 327 the Board was commenting on the interaction of then sections 17 and 23 (now sections 28 and 43). It stated:

15. Although the protection afforded an employee under section 24 [now section 50] extends beyond a refusal to work, it is necessary to consider the extent to which the Act permits employee



insubordination. Under section 23 [now section 43] of the Act an employee is expressly entitled to refuse to do whatever work he has been ordered to do *where the preconditions set out in the section have been satisfied.*

[emphasis added]

91. We have engaged in this review because, ultimately, we were of the view that the hazard complained of by Ms. Kidane is not one that falls within the statutory language of section 43(3)(a)-(c). While the language is very broad and it would be impossible to define or categorize the kind of matters that would meet that statutory language, we were satisfied that negotiating on behalf of uninsured clients did not. Fundamentally, it is not a physical condition, it is a concern about a quality of the work that is unrelated to the purposes of the OHSA. Consequently, in our view, Ms. Kidane did not have the right to refuse this work pursuant to the OHSA.

92. Can Ms. Kidane then utilize section 50, including section 50(7), to have the Board review the employer's conduct in terminating her employment? Ms. Kidane asserted that all she need have is a genuine health and safety concern; a subjective belief that her health and safety was at risk. The Centre, in essence, says any attempt to utilize section 50 is an abuse of rights and mechanisms established by the OHSA to deal with workplace health and safety issues. Is it appropriate to suggest that although a worker will not be required to know whether there is in fact a real threat posed by the hazard, they will be expected to be able to determine whether their perceived hazard is one covered by the terms of section 43? That poses the same undesirable potential of discouraging the raising of health and safety concerns, certainly in the first instance, that gave rise to the use of a subjective test in assessing whether the worker had "reason to believe" the work was unsafe.

93. The cases have not focused on whether or not a complaint ought to be dismissed without consideration of the merits where the basis for the work refusal does not satisfy the preconditions set out in sub-section 43(3)(a) to (c). Nor, given our conclusions with respect to the appropriate application of sub-sections 50(1) and 50(7) do we need deal with that in this case. On a review of those cases we note that there was no real dispute that there was a potential hazard within the ambit of that sub-section, some physical condition or substance; rather, there were disagreements as to the actual threat presented by the hazard complained of, and what rights the worker had in order to have that issue determined.

94. In this case, the "entry" into section 50 was, in a sense, accommodated because of the fact that no investigation had been completed as contemplated by the OHSA. The work refusal process in section 43 expects that an investigation of the hazard will be conducted immediately. Once the investigation occurs the worker is held to a different standard and may continue to refuse if her belief is then objectively sustainable. That investigation also informs any assessment of the bona fide nature of the worker's action in refusing, a factor that the Board has commented on at length in connection with the exercise of its discretion under section 50(7) and to which we will return later.

\* \* \*

95. With respect to the merits of the application, there was no dispute as to the proper interpretation and approach to section 50(1) of the OHSA. Both parties referred to and relied on the Board's decision in *H. H. Robertson Inc.*, [1991] OLRB Rep. Apr. 492 where that approach is summarized as follows:

63. Section 24(1) defines the worker's substantive rights. It prohibits an employer from penalizing a worker who has acted in, or sought compliance with the Act. But section 24(1) does not require that the employer establish "just cause" for its position. The presence of cause may bolster an employer's explanation for its actions, just as the absence of cause may suggest an improper motive, however, under section 24(1) "just cause" or "fairness" are not the primary focus. The issue is: was

the employment consequence complained of imposed “because” the worker was engaged in legally protected activity. This is a question of motive.

64. On the issue of motive, the Board has adopted an approach similar to that applied in unfair labour practice cases: if the employer was improperly motivated *in whole or in part* its actions are illegal (in this regard see, *R v. Bushnell Communications Ltd. et al* (1973) 1 O.R. (2d) 442 (H.C.J.); 4 O.R. (2d) 288 (C.A.); *Westinghouse Canada Ltd.*, [1980] OLRB Rep. April 577, affd. by the Divisional Court 80 CLLC 14062). The safety issue need not be the only or even the dominant employer motivation. It is sufficient if it is one of the reasons for the employer action under review. (See *Commonwealth Construction*, [1987] OLRB Rep. July 961 and more recently, *Bilt-Rite Upholstering Co. Ltd.*, [1990] OLRB Rep. July 755.)

96. We were satisfied that the Centre’s decision to terminate Ms. Kidane’s employment was not motivated in any way by her having engaged in the work refusal and the resulting statutory investigation process. On a review of the evidence there was little doubt that Ms. Kidane’s work performance and attitude fell short of the Centre’s expectations and that it had no reasonable basis for anticipating any improvement. It was clear that as early as the summer of 1994 the Centre was considering a severance from employment and initiated a proposal to discuss a severance package. Although not disciplinary in nature it must be viewed in the circumstances as a message to Ms. Kidane that the Centre was not satisfied with the employment relationship.

97. As noted earlier, Ms. Kidane did not seriously dispute many of the Centre’s claims. She was told to cut down on her outside activities. She responded by asserting that those activities were not stressful to her. At the hearing she asserted that she was engaged in those activities on her own time after a point in 1993. Yet she was unable to explain why she continued to record her attendance at those meetings in the Centre’s appointment book, which would leave the impression that she was treating it as part of her work responsibilities. She had failed to attend staff meetings although mandatory, she was late in providing her statistics, she agreed that she had engaged in counselling that was outside the mandate of the Centre, for which she had no formal training, and in circumstances where she had been told not to spend so much time with each client.

98. We heard evidence as to the amount of time various matters might take and the length of time taken by Ms. Kidane in certain interviews with clients and Ms. Kidane’s own acknowledgement that she went beyond dealing with reproductive health issues. She acknowledged that her work refusal was based on her view that uninsured clients often suffer a broader range of problems than merely reproductive health. No one suggested that the clients were not needy. No one suggested that the work is not difficult and at times, stressful. We have no doubt that the work requires a particular personality and commitment. Her response to this concern was that clients could not simply be referred away and that she also had to spend the time in order to determine what referrals were necessary. The other staff viewed their proper role as focusing on the reproductive health issues. If other issues arose, they identified them and referred clients to community health centres or other available resources, including those set out in the “blue book” of services. Ms. Kidane’s suggestion that non-OHIP clients be referred immediately to Community Health Centres for all issues was seen as an abdication of responsibility for reproductive health issues. Those were the Centre’s *raison d’être*.

99. There was no doubt that most if not all the members of the staff were, by the summer of 1994 and thereafter, extremely unhappy with having to work with Ms. Kidane. Over the course of 15 days of hearing we heard extensive evidence. Although some witnesses were more diplomatic than others, their evidence was consistent that Ms. Kidane could not or would not participate in the operation of the Centre as a collective effort. Having heard Ms. Kidane’s evidence this view was confirmed to us. While Ms. Kidane is obviously intelligent and no doubt skilled in many ways, she displayed an unwillingness to take responsibility for many of her actions, did not accept the priorities of the Centre’s work, and displayed an ability to be both arrogant and subtly manipulative. While Ms. Kidane asserts

that she received no help from her colleagues, she fails to see that she did get assistance from other staff or she ignored their advice as to setting work priorities. Even when confronted at the hearing with the uncontradicted statistics of her declining caseload she was unwilling or unable to attach any significance to them.

100. The unique structure of the Centre has contributed to the difficulties in these circumstances. The Centre operated on a day to day basis through the decisions of the collective, the staff. There is no manager, no person present to mediate staff disputes or to give directions that, if not followed, could be dealt with in the more usual method of progressive discipline. The structure puts increased responsibility on each of the staff to participate fully and to cooperate with each other in order to provide quality service. It requires persons to be able to face each other and deal directly with the inevitable problems of trying to service a marginalized community with limited resources.

101. This issue of resources became a sore spot for the staff. Ms. Kidane complained as early as the November 1992 evaluation of the lack of resources and justified some of her activities as attempting to enhance the available resources. Ms. Kidane did produce a map showing the geographic boundaries of the various community health centres in the Metropolitan Toronto area. No one disputed that the map was useful. However the complaints from Ms. Kidane regarding resources were seen as a problem in setting priorities as, from the point of view of the Centre and the staff, they had more resources than in the past. They were also now not focusing on increasing those resources in circumstances where more recently, their continued existence had been put in issue with the reduced availability of public funds.

102. Further, no one could point to any client who had been unable to obtain the reproductive health services required. Clients who did not have OHIP were able to receive service, whether at a reduced or waived fee or on negotiated payment terms. Anyone, including clients without OHIP had been able to obtain an abortion referral through the Centre. The witnesses were proud of these accomplishments in an environment where it is obvious that the needs are often if not always greater than the resources. They balanced that reality with what they had been able to provide for clients, recognizing that the resources available now were much greater than when they began, although those resources were again being threatened.

103. Nor could Ms. Kidane provide an example of a client (with OHIP or without) who had not been able to receive the necessary referral or treatment. The role of the counsellor is to be that advocate on behalf of clients, particularly those who are most marginalized, that is, those without even OHIP coverage to assure their access, regardless of all the other problems to access that culture, language, education, and economics create. In her cross-examination, Ms. Kidane agreed that all her non-OHIP clients received service because she was able to negotiate on their behalf. Counsel put it to her, "because you did your job?" and Ms. Kidane answered yes. Given those outcomes the staff resented and were frustrated by Ms. Kidane continuing to assert that she had no resources to work with and that the Centre had failed to develop resources.

104. Faced with a staff member who showed an unwillingness or inability to deal directly with other staff and a deteriorating relationship at the collective level, the Board of Directors in hindsight, may well have been better served to take a more traditional managerial style, one that relied on hierarchical direction as opposed to collegial activity. As it was, it appears that Ms. Kidane felt unrestrained by any comments or views of her colleagues and perceived them as a source of harassment and abuse. The staff on the other hand felt ignored, manipulated, unappreciated, and unfairly criticized. All in all it was a recipe for disaster.

105. In challenging the Centre's reasons for discharge, Ms. Kidane relied on the timing of the discharge, occurring immediately after the investigation of the work refusal but before the report of that



investigation was released and certain evidence of Ms. Longobardi, which it was asserted, constituted an admission by the Centre that the work refusal had formed at least part of the reason for discharge.

106. We will review the timing issue first. In our view that evidence arguably supports either parties' position. When Ms. Kidane engaged in the work refusal in September 1994, there were no repercussions as a result. The Centre did in fact accommodate her refusal. The Centre had also accommodated an earlier (albeit different) refusal in August 1993. Although the specific provisions of the OHSA were not engaged by anyone at that time, the matter of that refusal was resolved by the parties and Ms. Kidane again saw new clients.

107. The Centre had expressed its view that the work refusal was unwarranted in its letter of October 21, 1994. (Arguably the parties were entitled to seek the presence of the Ministry at that time. There seemed to be some reluctance on the part of the Ministry to attend at the workplace and this appears to have contributed to the delay in holding the investigation.) Ms. Kidane grieved that letter and wrote that she was not unwilling to participate in an investigation but asserted a conflict of interest on the part of the Centre's participant, Ms. Longobardi. Notwithstanding the fact that the Centre felt it had the unlimited right to choose its own representative, it responded by removing the letter from Ms. Kidane's file, settling the grievance, and appointing a representative acceptable to Ms. Kidane to conduct the investigation. These actions are entirely consistent with a willingness to pursue the process and have the matter resolved. We note that the Centre is entitled to disagree with Ms. Kidane so long as it does not penalize her for engaging in the work refusal process.

108. We were also satisfied that the Centre did not discharge Ms. Kidane before the work refusal was investigated by Ministry officials in order to deny her that process and the possibility of having the refusal upheld. Nor did the Centre wait until its report of the investigation of the work refusal was issued and say, in effect, the work refusal was unjustified, your actions were therefore unjustified, and we are going to terminate your employment. It acted in response to demands from a staff that was almost if not entirely unanimous that they were unable and unwilling to continue to work with Ms. Kidane. We have no doubt that the Board of Directors genuinely believed that the Centre was in crisis.

109. The staff were affected by Ms. Kidane's work refusal in that they were required to pick up her caseload of uninsured black clients in addition to their own caseloads. Even if Ms. Kidane had been willing to take over the management of cases of other counsellors in exchange (which was not clear) this was unacceptable to the staff because it differed from the philosophical basis for delivery of care that the Centre had chosen and worked under for years. Ms. Kidane's apparent willingness to seek out new clients from the Ethiopian and Somali communities meant trading off clients without OHIP to make room for clients with OHIP. We have no doubt that the staff saw Ms. Kidane's work refusal as a means to accomplish an end she could not otherwise achieve, to change the mandate and accessibility of the Centre by turning away non-OHIP clients and effecting a redistribution of work based on language as opposed to ethnicity. We also have little doubt that many of the staff saw Ms. Kidane as shirking her responsibilities and saw the issue of serving non-OHIP clients as having nothing to do with the application of the provisions of the OHSA. However they too accommodated the refusal.

110. However from their point of view, they received, in effect, no accommodation in return. During the period following her work refusal, Ms. Kidane continued to refuse to attend any staff meetings, her remaining workload declined and there was no evidence to suggest that the relationship with staff would or could improve.

111. After commencing the work refusal in September 1994 Ms. Kidane agrees that she did not attend any further staff meetings notwithstanding the fact that attendance was mandatory. Counsel argued that nothing of substance had been discussed at these meetings and that the work of the Centre continued to be completed. In our view this misses the point, particularly for an organization structured

as the Centre is. There was no dispute that the staff kept each other informed of each other's activities and used the meetings as one means to help co-ordinate the activities of the Centre. The failure to attend was an outright act of insubordination. Ms. Kidane had been advised on at least two occasions of the requirement to attend. She chose not to because as she put it, the environment was hostile. No doubt her repeated failure to attend contributed to an increasing hostility.

112. There was also no confidence that Ms. Kidane would work within the mandate of the Centre. Even at the hearing she continued to assert that clients could not be "referred away", suggesting a continued unwillingness to restrict her counselling to matters involving reproductive health issues. Ms. Kidane may well have preferred to be employed in a Community Health Centre where the full range of client problems can be addressed. Those centres provide a wide range of services covering a broad range of issues, including physical and mental health, economic and legal issues, and social and cultural issues. They are also staffed by a variety of social service, health and medical, and in some cases, legal professionals. Although the Centre made and pursued a proposal that it expand into a Community Health Centre, that plan had been rejected and the mandate of the Centre remained limited.

113. Having heard all of the evidence we are inclined to agree with counsel for the Centre that, initiating the work refusal in September 1994 probably had the effect of extending Ms. Kidane's employment. When Ms. Kidane returned from sick leave in early August 1994 the Centre asked for medical confirmation of her fitness to return to work. It also asked for a proposal on a severance package. Although the traditional forms of notice and discipline were not utilized there can be little doubt that Ms. Kidane was aware that her employment was in jeopardy.

114. In September, 1994 Ms. Kidane responded with a letter from a second physician. That letter indicates Ms. Kidane was suffering from work-related stress and recommends reducing her workload, in effect stating that she was not fit for full duties. That letter does not refer to working with non-OHIP clients as the cause of stress. However the Centre did not have the opportunity to respond to the medical opinion before Ms. Kidane initiated the work refusal. That being initiated, the Centre shifted its attention to dealing with that process. Then in February 1995 it had to turn its attention to the fact that the bulk of the staff were threatening to resign because of Ms. Kidane.

115. The other matter relied on by Ms. Kidane was the alleged admission by Ms. Longobardi in evidence that the Centre had taken the work refusal into account in its decision to terminate Ms. Kidane's employment. The Centre's counsel in fact raised the matter in submissions arguing that the evidence could not be taken as an admission.

116. Ms. Longobardi had been on the Board of the Centre since 1992. At the time of the work refusal she was asked to represent the Centre at the investigation. However Ms. Kidane refused to participate at the meeting on October 19, 1994 because she asserted that Ms. Longobardi was a friend of one of the staff members and was therefore in a biased position. Ms. Kidane had a union representative with her at that time but the meeting did not proceed.

117. Ms. Longobardi testified in chief that she was present at the Board meeting of February 23, 1995. In her view two-thirds of the staff at that time were threatening to quit. As she put it, since 1975 the Centre had made decisions as a collective - working together as a unit, and that wasn't happening. Ms. Longobardi testified that she considered resigning because she felt like she had been dealing with only one issue throughout her tenure as Board member; that issue was described as Ruth Kidane. She described the decision of the Board as a choice between Ms. Kidane or two-thirds of the staff. In chief, after reviewing the reasons for discharge, Ms. Longobardi stated that Ms. Kidane was not terminated because she was refusing to see non-OHIP clients, nor was she terminated because she had staged a work refusal.

118. Ms. Kidane relies on evidence from Ms. Longobardi's cross-examination. We have reviewed our notes carefully and the evidence in question and are of the view that it cannot be given the interpretation asserted on behalf of Ms. Kidane. The relevant portion of the cross-examination discloses that counsel noted that two-thirds of the staff had threatened to quit. Ms. Longobardi answered that they were frustrated. Counsel reiterated that they were threatening to quit and Ms. Longobardi agreed. Counsel asked if two other Board members were also threatening to quit and Ms. Longobardi agreed. Counsel posed that Ms. Longobardi felt she was not contributing to the Italian community, that she was just dealing with the "issue with Ruth" to which Ms. Longobardi agreed. (Ms. Longobardi had earlier testified that her reason for joining the Board was to contribute to the Italian community). Counsel then asked, "part of that were her complaints about workload?" Ms. Longobardi agreed. Counsel asked if "part of the issue" was her refusal to see non-OHIP clients, and Ms. Longobardi agreed. Finally counsel asked if part of that was Ms. Kidane's work refusal. Ms. Longobardi answered to the effect that it was the whole situation she [Ms. Kidane] was involved in.

119. At no time during these questions was Ms. Longobardi directing herself to the reasons for termination. She acknowledged that staff as well as herself were frustrated. The reference to the "issue of Ruth" when taken with her other evidence is a reference to Ms. Longobardi's frustration as arising over three years of experience dealing with Ms. Kidane. She then acknowledges that Ms. Kidane's refusal to see non-OHIP clients contributed to her frustration. Ms. Longobardi was commenting quite openly as to her personal frustrations. Feeling frustration and acting on it are two separate matters. The evidence did not disclose that these frustrations were even discussed at the meeting of February 23, 1995. Given the manner in which the questions were put, in light of all of the other evidence, we are not prepared to conclude that these comments constituted an admission by the Centre that Ms. Kidane's work refusal formed part of its reasons for deciding to terminate her employment.

120. We were satisfied that the Centre did not terminate Ms. Kidane's employment because she had acted in compliance with the OHSA or had sought its enforcement contrary to section 50(1) of the OHSA. Rather she was terminated for reasons of poor work performance and her inability or unwillingness to work in the collective environment of the Centre.

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121. The remaining issue was whether the Board ought to exercise its discretion under section 50(7) to modify the penalty of discharge. There was again no dispute as to the Board's authority to do so, even in the absence of a finding of a violation of section 50(1). Notwithstanding the fact that there was no formal discipline on Ms. Kidane's file at the time of her discharge, we were not persuaded that that fact outweighed the other considerations in the exercise of our discretion.

122. The conclusion that a work refusal is not protected by section 43(3) has been a factor in the exercise of the Board's discretion even where the refusal was in good faith. In *Ministry of Community and Social Services, The Crown in Right of Ontario; Re Douglas Lloyd*, [1988] OLRB Rep. Jan. 50 the worker, Mr. Lloyd, was employed in a secured custody facility under the *Young Offenders Act* and did not have the right to refuse work pursuant to the exemption of that worker under what is now section 43(2)(c) of the OHSA. The worker asserted that he had been disciplined in violation of now section 50 of the OHSA for acting in accordance with his duty under now section 28. He refused to perform work in a different location although directed to do so, because, in his view, it would then jeopardize the safety of other workers left in the first location, where he was prepared to continue working. The first location housed a population of young offenders that included at that time, a resident charged with murder, one with sexual assault, and one with manslaughter. In Mr. Lloyd's view, with twenty years experience at the institution, he felt that staffing levels at the first location would present too great a



security and safety risk should he be moved elsewhere. There was no dispute that Mr. Lloyd was motivated by a genuine health and safety concern for his fellow employees.

123. The Board discussed the fact that Mr. Lloyd did not have the right to refuse work under section 43 and that he could not couch his refusal to follow orders to work elsewhere under section 28 of the OHSA as a “back door” to obtaining the right to refuse unsafe work. The Board noted:

26. Although policy reasons dictate that the employees at Brookside can not refuse work for health and safety reasons within the meaning of section 23 of the OHSA, employees in Lloyd’s position have been denied an important privilege. In a section 23(1) situation, a worker who is disciplined for refusing an employer’s order which requires the worker to contravene the Act, does not have the protection of section 24(1) of the Act. However, this does not necessarily mean that no remedy is available. Sub-section 24(7) provides that where a worker is discharged or otherwise disciplined for cause and no specific penalty exists, the Board may substitute a penalty which seems just and reasonable in the circumstances. This sub-section gives the Board a very broad discretion. In reviewing all of the circumstances of a particular case, the Board undoubtedly would give some weight, depending on the penalty imposed, to the fact that a complainant was disciplined for refusing an order directing that person to act contrary to the Act or to the fact that a complainant was motivated by a health and safety concern and was acting in good faith. It was not suggested by either counsel that sub-section 24(7) did not apply to the circumstances of this case. We note that the complainant is a person who is covered by the terms of a collective agreement (see, *Commonwealth Construction Company, supra*).

124. The Board declined to modify the penalty in the circumstances of that case, notwithstanding the fact that Mr. Lloyd had acted in good faith and for a health and safety reason.

125. In addition to *Ministry of Community and Social Services, The Crown in Right of Ontario; Re Douglas Lloyd, supra*, see also *Butler Metal Products*, [1988] OLRB Rep. Oct. 1003, *Commonwealth Construction Company, supra* and *Bilt-Rite Upholstering Co. Ltd.*, [1990] OLRB Rep. July 755 which latter decision comments on this connection of a health and safety concern to the exercise of discretion under section 50(7):

47. In the above cases in which the discretion to modify the penalty was exercised, there was a clear nexus to health and safety. Despite the lack of finding of a violation, each case involved a purported, usually somewhat mistaken, but in some sense bona fide, attempt to exercise rights under the OHSA. As it was put in *Ministry of Community and Social Services, supra*, it is appropriate under this section to give some weight to the fact that a complainant was acting in good faith, motivated by a health and safety concern. *Where this is not the case the Board will appropriately consider the absence of a bona fide health and safety concern, or lack of good faith in making the complaint, as a weighty factor which might lead to its declining to exercise this discretion as it did in The Corporation of the City of Ottawa, supra.*

(emphasis added)

126. This approach is summarized in *H. H. Robertson Inc.*, [1991] OLRB Rep. Apr. 492 as follows:

80. It is important to emphasize however, that while the Board has *jurisdiction* to apply section 24(7) [now section 50(7)] on any section 24(1) [now section 50(1)] inquiry, it is not obliged to intervene or modify the penalty the employer has imposed. The exercise of this power is *discretionary*, and in our view, should be consistent with both the “equities” in a particular case, and the policy considerations mentioned above. Among those considerations (in the words of the Board in *Radio Shack, supra*) should be a concern that “its decisions are perceived, in the main, as reasonable and fair to attract as much self-compliance as possible”. The words of the statute, the need for finality and the avoidance of multiple litigation all suggest that the Board’s inquiry will parallel that of an arbitrator, however, in either case, it may be significant that a complainant has acted in bad faith or launched a vexatious proceeding or otherwise abused the important rights that the OHSA was designed to protect.

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85. On the evidence before it, the Board is satisfied that the complainant could not and did not reasonably believe that the workplace was unsafe on August 16th. His work refusal on that day was vexatious, and was compounded by his refusal to cooperate with the Ministry of Labour team when they were investigating the very medical concerns which he now says motivated him to refuse to work in the first place. The complainant was both insubordinate and abusing the important statutory rights available to workers under section 23; and, for that reason alone (i.e. quite apart from Article 6.07) a disciplinary response would have been warranted.

86. In cases such as *Bilt-Rite*, *supra*, *Butler Metal Products*, [1988] OLRB Rep. Oct. 1003, *Ministry of Community and Social Services*, [1988] OLRB Rep. Jan. 50 and *Imperial Oil*, [1982] OLRB Rep. Apr. 580, the Board has given the OHSA a liberal interpretation to protect workers who are honestly but mistakenly trying to exercise rights under the OHSA, to comply with its obligations, or to seek its enforcement. In each of these cases, the complainant's honesty, prudence, or good faith were mitigating factors to be considered under section 24(7), even where it turned out that the worker was being over-cautious or mistaken, and there was in fact no breach of section 24(1). The Board has accepted the maxim that "it is better to be safe than sorry", even at the expense of some interference with an employer's operations or prerogatives, because that approach is most consistent with the purpose of the OHSA. It follows, however, that where a worker has not acted in good faith, or has abused the important rights or remedial mechanisms provided under the OHSA, these are factors which should weigh against him/her when the Board is asked to exercise its remedial discretion under section 24(7). That, too, is an important message to send to the employer/employee community.

127. We were concerned that part of Ms. Kidane's motive in pursuing the work refusal was to effect a redistribution of the work in accordance with her own views as to how the Centre should operate. The overwhelming view we were left with, having heard all the evidence, was very much as summarized by Ms. Egan in her evidence. Ms. Egan is a well-respected member of the women's health network, having been a health advocate in Ontario for some twenty years. She is someone who Ms. Kidane apparently respected. She testified that in her view, Ms. Kidane had been unable to accept the philosophical underpinnings of the method of care delivery at the Centre from the outset. Ms. Kidane wanted to serve clients based on language, not race or ethnic origin. The reasons for that are less clear. Whether she saw it as a discriminatory practice, as a means to focus on a clientele she personally preferred and with whom she had a language affinity, as a means to avoid dealing with certain other clients, or all of those, she wanted to change it and in many ways her work refusal acted to make that change. By refusing to see non-OHIP black clients she would be redistributing her work in a way to effect the change she wanted.

128. When asked how Ms. Kidane could be returned to work without, from her point of view, raising the possibility of further stress-related illness, counsel acknowledged that the work would have to be reorganized so that Ms. Kidane would not have to deal with non-OHIP clients; that the Centre would then meet its obligations under sub-section 25(2)(h) of the OHSA. Yet Ms. Kidane also has an obligation under section 28(2)(b) of the OHSA not to work in a manner that will endanger any other worker. On her view of the operation of the OHSA, adding more non-OHIP clients to the workload of other counsellors could potentially put them at risk. This simply highlights the difficulty of trying to reasonably fit this matter within the words of the statute.

129. By the time of the hearing events appear to have completely overtaken Ms. Kidane's ability to understand her own motives or to assess her position realistically. Although she would vary her answers and rationales in giving evidence, in many ways it seemed she was simply unaware of the contradictions. She is a strong personality and has a certain persuasive effect. She is however in our view misguided as to the ambit and objective of the provisions of the OHSA. We reiterate the nature of the work refusal. Ms. Kidane asserted that negotiating on behalf of clients who do not have OHIP constituted a hazard under section 43 of the OHSA.

130. The Centre's employment concerns were valid and serious. Ms. Kidane gave little indication that she appreciated those concerns or would alter her behaviour if reinstated. Much of that concern centred on her ability to work with the other staff. While Ms. Kidane feels victimized by her treatment by staff, we were persuaded that she lacks an objective perspective in that regard and is unwilling or unable to see or appreciate the effects of her own behaviour. For example she seemed genuinely surprised that staff might be taken aback by her criticisms in the evaluation. Yet those criticisms are sharp and arise in the context of a substantially self-congratulatory evaluation. A basic appreciation of human relations would anticipate surprise at a minimum.

131. In context this is a worker employed four days a week, six hours a day, who enjoys four weeks of paid vacation a year, 15 paid holidays, and further time off for personal moves and compensating time in lieu of overtime. No one disputed that the job of counsellor could be stressful and the terms and conditions of employment no doubt reflect that fact. There was however no evidence that any stress suffered by Ms. Kidane was caused by this work. There was no evidence that Ms. Kidane is a susceptible worker. The complaint was not about workload. The hazard complained of was the need to contact other services and negotiate for reduced or waived fees or other provision of services required to meet the reproductive health needs of the client. While Ms. Kidane complained that clients without OHIP have multiple problems, it was not part of her duties to counsel in respect of those problems, nor did she assert any hazard arising out of dealings with the clients themselves. We are prepared to conclude that this work does not create a hazard within the meaning of section 43 of the OHSA; it may be difficult work and it may be work that Ms. Kidane did not like. That did not warrant the exercise of our discretion to modify the penalty in the circumstances.

132. In summary, we declined to exercise the discretion to modify the penalty because there was no good policy reason to interfere with an otherwise proportionate response to Ms. Kidane's conduct. Even assuming a genuine belief that her health was in jeopardy, there was no evidence to connect any health concern with Ms. Kidane's purported work refusal. The hazard alleged and the consequent refusal constituted an attempt to redistribute work that, in the circumstances, did not present a hazard as contemplated by sub-section 43(3). In the words of *H.H. Robertson Inc.*, *supra*; the work refusal can be characterized as an abuse of "the important rights the OHSA was designed to protect". Nor was there any basis for concluding that Ms. Kidane's approach to the work and her colleagues would change if reinstated. The evidence was to the contrary.

133. For those reasons, we dismissed the application.

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## **2125-96-R International Union of Operating Engineers, Local 772, Applicant v. Chedoke-McMaster Hospitals, Responding Party**

**Bargaining Unit - Certification - Representation Vote - Board directing representation vote in voting constituency mirroring bargaining unit proposed by union and agreed to by employer - On eve of taking of representation vote, employer writing to Board to assert that union's proposed bargaining unit not appropriate - Board not permitting employer to approbate and reprobate at same time - Board holding employer to its agreement to union's proposed bargaining unit and finding agreed-upon bargaining unit appropriate - Certificate issuing**

**BEFORE:** *Russell G. Goodfellow*, Vice-Chair, and Board Members *S. C. Laing* and *D. A. Patterson*.

**DECISION OF THE BOARD;** February 6, 1997



1. This is the continuation of an application for certification.
2. A representation vote was held on November 1, 1996. There were thirty-eight names on the voter's list at the start of the vote. Thirty-four people voted. Twenty-five cast ballots in favour of the applicant. Nine people voted against it. There were no segregated ballots. The responding party asserts that there has been no agreement on the appropriate bargaining unit, that the bargaining unit proposed by the applicant is inappropriate, and that the application should be dismissed.
3. The bargaining unit proposed by the applicant is:

all Tradesmen, Maintenance Men, Building Service Operators, Associated Craftsmen and their Helpers, save and except Supervisors and persons above the rank of Supervisor.

This description corresponds with the voting constituency defined by the Board in its decision dated October 29, 1996 directing the vote. The responding party asserts that it never agreed to this bargaining unit description and that it only agreed to a voting constituency. It further suggests that the bargaining unit proposed by the applicant would lead to undue fragmentation.

4. The application was filed on October 21, 1996. It contained the proposed bargaining unit description set out above. The response was filed on October 22, 1996. It contained a dramatically different bargaining unit description. The responding party's proposed bargaining unit was much broader. It purported to include 356 employees, rather than the 38 identified in the application. The bargaining unit description set out in the response is the same description that the responding party now asserts is appropriate.
5. In the meantime, however, on October 29, counsel for the responding party wrote to the Board as follows:

"Further to our faxes of October 28 and 29, 1996 and our telephone discussions of today's date, I have received instruction from my client that I am to amend Form TA-2 which was filed with the Board, specifically paragraph #4, to state that the *Respondent is in agreement with the description of the bargaining unit as proposed by the Applicant*. It is my understanding that with this amendment, an Order of the Board will issue for a vote to proceed on November 1, 1996 and that those persons eligible to vote will be the 37 individuals as identified in Schedule "A" attached to our Response. Those persons set out in Schedule "B" will not be eligible to vote nor will they be voting.

I look forward to receipt of the Board's Order and confirmation of the above. I am as a courtesy providing this fax to Mr. Yemen of the Operating Engineers."

[emphasis added]

6. On the basis of this correspondence the Board directed the holding of the vote in a voting constituency that corresponded to the agreed upon unit. The vote was scheduled to occur on November 1, 1996 between the hours of 6:00 a.m. and 7:00 a.m. and between the hours of 2:00 p.m. and 3:30 p.m. Notices of the vote were posted in the workplace.
7. At 4:12 p.m. on the day prior to the vote, however, counsel for the responding party faxed the following additional letter to the Board's offices:

"We are the solicitors for Chedoke-McMaster Hospital with respect to the above-noted file.

A representation vote is scheduled for November 1, 1996. That vote is being conducted pursuant to the decision of the Board dated October 29, 1996 chaired by Russell G. Goodfellow.

In correspondence to Jim Bowman on October 29, 1996, the Respondent confirmed it was in agreement with the bargaining unit description as described by the Applicant in paragraph #4. As a result, pursuant to s.8(1)(2) the voting constituency was determined.

We confirm that it remains the Respondent's position, that after the representation vote has been held, that the Board should hold a hearing pursuant to s.8(8) of the *Labour Relations Act*.

As per the Response to the Application for Certification and specifically Appendix "A" to Form TA-2, the Respondent's position remains that the Applicant's proposed bargaining unit would lead to undue fragmentation and be contrary to the purposes of the *Ontario Labour Relations Act*. Further, it is not a bargaining unit which is appropriate for collective bargaining in hospitals. It is the Respondent's position that a hearing should be held to determine whether the Application for Certification should still be dismissed regardless of the outcome of the representation vote. However, it is our position that the ballot box remain closed until the above issues are addressed.

In addition, it is our position that a hearing should be held given the notice received from the Canadian Union of Public Employees with respect to their intervention.

We trust the above is satisfactory and look forward to receiving further direction from the Labour Board."

The intervention filed by C.U.P.E. has since been withdrawn.

8. On November 1, 1996, in response to this correspondence, the applicant also wrote to the Board and asserted that the responding party had, by its October 29 letter, waived its right to challenge the appropriateness of the unit. Both parties have since filed written representations and have invited the Board to decide the case on the basis of those representations.

9. In the Board's view, the responding party's position is supported neither by the facts nor the scheme of the *Labour Relations Act, 1995*. The Act requires an applicant for certification to supply the Board with a written description of the proposed bargaining unit (section 7(12)). If the responding party disagrees with the appropriateness of that unit, it may give the Board a written description of its own proposed unit (section 7(14)). The Board may then determine a voting constituency (section 8(1)). In determining that voting constituency, the Board must have regard to the bargaining unit descriptions proposed by the parties (section 8(1)). If the Board determines that forty per cent of the individuals in the bargaining unit proposed in the application appear to be union members at the time the application was filed, the Board must direct a representation vote in the voting constituency (section 8(2)). Once the vote is held and the ballots counted, the applicant will either be certified in that unit, the application will be dismissed, or a hearing will be held to deal with any outstanding issues. Included among these issues might be a determination of the appropriate bargaining unit. Section 9(1) of the Act requires the Board to determine an appropriate bargaining unit.

10. It will be apparent from this scheme that it is the Board's role to determine both bargaining units and, as necessary, voting constituencies. The employer's role, like that of the union, is confined to making bargaining unit proposals. It is neither invited nor required by the statute to propose a voting constituency. Voting constituencies are for the Board to determine in the event that there is no agreement on the proposed bargaining unit. Where, however, the bargaining unit is agreed, it will be that unit which is "voted" and that unit which, in most cases, will be found to be appropriate in the decision directing the vote.

11. In the Board's view, there is no place in this statutory scheme for a "qualified" agreement on a proposed bargaining unit description or an agreement for one purpose but not another. Employers may either agree or disagree on a proposed bargaining unit, but it is the Board that determines, where necessary, a different form of voting constituency.

12. In this case, and as part of its response, the employer initially proposed a bargaining unit description that was significantly different from that which had been proposed by the applicant. Thereafter, and for reasons which are not clear from the file, the employer abandoned its proposal and *expressly agreed to the unit proposed by the applicant*. At no point in the letter setting out its agreement to the applicant's proposed unit did the employer make reference to the bargaining unit/voting constituency distinction that it now seeks to draw. That distinction only emerged on the very eve of the vote, when it was too late to reconstruct the vote in a timely manner in accordance with the responding party's original position or in accordance with any other position that it might have. The vote then proceeded and the ballots were counted. It has long been the Board's practice not to allow parties to resile from their agreements or, in effect, to approbate and reprobate at the same time. To do so would introduce a tangible degree of uncertainty into a system that depends, to a large extent, on the furthering of parties' agreements. Accordingly, and on the basis of the foregoing, the Board finds that the responding party is bound to its agreement to the applicant's proposed bargaining unit set out in its letter of October 29, 1997.

13. On the basis of that agreement, and having regard to the other material before it, the Board finds that the unit described in paragraph 3 of this decision is appropriate. As the Board has noted on many occasions, its role is not to find *the* appropriate unit or even the *most* appropriate unit, but *an* appropriate unit. While it is true that, generally speaking, the Board prefers more comprehensive units, there is nothing to substantiate the responding party's assertion that the unit proposed by the applicant does not "encompass a group of employees with a sufficiently coherent community of interest that they can bargain together on a viable basis without at the same time causing serious labour relations problems for the employer" (see *The Hospital for Sick Children*, [1985] OLRB Rep. Feb. 266). The unit proposed by the applicant is not unusual. It is one which the applicant represents in other hospitals and corresponds with one which, albeit on agreement of the parties, the Board recently found to be appropriate in *Thunder Bay Regional Hospital*, Board File No. 0051-96-R, dated June 11, 1996. In particular, the impending merger between the responding party and Hamilton Civic Hospital also does not cause the Board to conclude that the bargaining unit is inappropriate. In the event that the merger proceeds, it remains an open question whether there will be competing claims to employee representation rights. Even if such claims are made, however, they may be resolved by agreement of the parties or, perhaps, under section 69 of the *Labour Relations Act, 1995*. These possibilities are not sufficient to prevent employees from being represented by the trade union of their choice in a unit which is otherwise appropriate.

14. Having regard to the results of the representation vote, a certificate will issue to the applicant.

15. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before the expiration of such 30-day period.

16. Any meeting and hearing dates set previously are hereby cancelled.

17. The responding party is directed to post copies of this decision immediately, adjacent to all copies of the "Notice of Vote and of Hearing" posted previously. These copies must remain posted until the date that had been set for the hearing.

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**0774-96-U; 0775-96-U; 0776-96-U; 0777-96-U; 0778-96-U; 0779-96-U; 0780-96-U**  
Soft Drink Workers Joint Local Executive Council, Applicant, v. **Coca-Cola Bottling Ltd.**, Responding Party; United Food & Commercial Workers International Union, Soft Drink Workers Joint Executive Council, Applicant, v. Coca-Cola Bottling Ltd. (Peterborough), Responding Party

**Unfair Labour Practice - Union alleging that six individuals previously employed at shut-down Peterborough facility not offered positions at new facility in Cobourg because of their union affiliation - Board not satisfied that employer's decision free of anti-union animus - Application alleging violation of section 72(a) of the Act allowed**

**BEFORE:** *Lee Shouldice*, Vice-Chair.

**APPEARANCES:** *Elliott G. Posen* and *Dennis Krajaefski* for the applicants; *Gita Anand*, *Jim Nemeth*, *Ray Nolan* and *Wayne Sponagle* for the responding parties.

**DECISION OF THE BOARD;** February 26, 1997

## **I. Introduction**

1. These applications are seven unfair labour practice complaints which were filed with the Board in June, 1996. They came on for hearing before this panel of the Board on January 28, 29, and 30, 1997.

2. These applications were filed at the same time as an application under section 101 of the *Labour Relations Act, 1995* ("the Act"), in which it was asserted that the responding party Coca-Cola Bottling Ltd. (hereinafter referred to as "Coca-Cola" or "the employer") had unlawfully locked out members of the applicants (hereinafter referred to as "the U.F.C.W." or "the union"). That proceeding came on for hearing before me on June 20, 24, and 25, 1996. It was agreed at that time that I would proceed to hear only the unlawful lockout application. By way of decision dated July 17, 1996 (reported at [1996] OLRB Rep. Jul./Aug. 541), I dismissed that application.

3. In these proceedings, the U.F.C.W. alleges that six individual employees previously employed at the Peterborough facility were not offered positions at a new facility in Cobourg because of their union affiliation, contrary to section 72(a) of the Act, which reads as follows:

**72.** No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act.

There is no dispute that the employer offered employment to, and in fact hired, bargaining unit employees from the Peterborough location at Cobourg. However, the union asserts that the six individual complainants were not offered positions at Cobourg because of their present or past involvement in local union affairs. Each of the applications is brought by the union on behalf of one of these individuals, and a separate complaint is brought by the union on its own behalf.

4. When these proceedings came on for hearing in January, 1997, counsel agreed that the factual findings made in the unlawful lockout application would bind the parties and could be applied

to these proceedings. Accordingly, no evidence of significance was called speaking to the events recorded in the earlier decision. Counsel also agreed not to call evidence regarding the issue of remedy. If necessary, I agreed to remain seized of these proceedings in order to determine any remedial issues should the parties be unable to agree on the remedy.

5. Over the course of three days of hearing, I heard the evidence of two witnesses for the employer, namely Mr. Ray Nolan, who at all relevant times was the employer's Peterborough Sales Manager (and the most senior executive at the Peterborough facility - he is currently the employer's Regional Manager for Home Market Business Development for Greater Toronto), and Mr. Jim Nemeth, the employer's Industrial Relations Manager, Ontario Division. On behalf of the applicants, I heard the evidence of the six individual complainants: Messrs. Paul Donoghue, Larry Pluard, Andrew Hunter, Rob Hewitt, Reginald Kelusky, and Jim Booth. There were numerous inconsistencies in the testimony, and where necessary I have indicated below whose testimony I have accepted as more likely to be representative of what happened, and why I have reached that conclusion.

## **II. The Facts**

6. These seven unfair labour practice applications are brought in the context of a plant closure in Peterborough, Ontario. The employer is a bottler and distributor of beverages in Ontario. The union is the bargaining agent for a bargaining unit of the employer in Peterborough, Ontario, and has been since the 1970's. The union also represents a number of employees of the employer in numerous other locations throughout the province of Ontario. Prior to April, 1996, the employer had been located in Peterborough for approximately 70 years. It most recently operated a distribution warehouse in Peterborough, and employed approximately 24 employees at that location. The employees who worked at the Peterborough distribution warehouse included "inside employees" such as labourers, shipper/receivers, and sales equipment service technicians, as well as "outside employees" such as Delivery Salesmen-In-Charge (hereinafter referred to as "DSIC's").

7. The union and the employer were parties to a collective agreement which was in effect from July 27, 1992 to July 23, 1995. On or about July 17, 1995, the employer received a notice of desire to bargain a renewal collective agreement from the union. Mr. Krajaefski met with Mr. Wayne Sponagle (the General Sales Manager for the employer's Northern and Eastern Regions) and Mr. Nemeth in Ottawa on August 29, 1995, when they were negotiating a collective agreement for the Ottawa bargaining unit. At that time, there was a discussion regarding the Peterborough situation. Messrs. Sponagle and Nemeth advised Mr. Krajaefski that the Peterborough facility was most likely going to be moved in late 1995 or early 1996, and requested that negotiations be deferred until the situation was clarified. The union and the employer agreed that, while the employer's plans were being finalized for Peterborough, the parties would concentrate their negotiation efforts on other agreements up for renewal. It was agreed that, once the employer was in a position to advise the union of what specific actions were planned, and a time-table was established, negotiations would commence. At that time, Mr. Krajaefski was aware that the building previously owned by Coca-Cola in Peterborough had been sold, and that the employer had temporarily moved into another facility on Park Street in Peterborough.

8. Rumours of a possible move from the Park Street location spread amongst the workers in Peterborough during the summer and fall of 1995. In October, 1995, Mr. Krajaefski and counsel for the union each wrote to Mr. Nemeth and somewhat surprisingly (and forcefully) requested that the employer meet to negotiate a renewal collective agreement for Peterborough. Mr. Nemeth indicated that the employer was prepared to meet with Mr. Krajaefski and the union, and subsequently the parties did meet on December 14, 1995, in Peterborough.

9. The December 14, 1995 meeting was attended by Mr. Sponagle, Mr. Nemeth, and Mr. Nolan, on behalf of Coca-Cola. On behalf of the union, Mr. Krajaefski, Mr. Paul Donoghue (the Local

President), Mr. Larry Pluard (the Local Vice-President and outside steward), and Mr. Andrew Hunter (the union's inside steward) were in attendance. Mr. Sponagle advised those present that the Peterborough distribution centre would be closing and that the work from the facility would be moving to Cobourg on or about April 1, 1996. Discussions centred around the business reasons for the decision to move, and what would happen to the employees then employed in Peterborough. Mr. Sponagle indicated that the employer would choose those employees who would be offered positions in Cobourg, and that some employees who had an "attitude problem" would not be going. Mr. Pluard stated that Mr. Sponagle referred to the employees who would be going to Cobourg as "the A team".

10. Subsequent to the meeting of December 14, 1995, Mr. Nolan met with his management team to discuss which employees would be offered positions at Cobourg. In late December, 1995, Mr. Nolan met with Mr. Dave White, Support Services Manager, Cooler Shop and Warehouse, Mr. Mike Gates, the Distribution Manager, Mr. Brad Way and Mr. Art Bunnett, Business Development Managers in the Home Market, and Mr. Scott Thompson, Business Development Manager for Cold Drinks. These managers constituted Mr. Nolan's management team, and the various bargaining unit employees at the Peterborough distribution centre reported to one of these managers. Performance evaluations had been completed for each bargaining unit employee during 1995, and the management team reviewed them at this meeting.

11. It is significant to note, at this juncture, that the performance evaluations were prepared at different times in 1995, and by different individuals. A number of the appraisals were completed by Mr. Gerry Guthrie, who was the Distribution Manager until August, 1995, at which time he left the employ of Coca-Cola. The evaluations completed by Mr. Guthrie were written between June and August, 1995. Approximately 6 to 8 weeks after Mr. Guthrie left Coca-Cola, Mr. Gates was hired as his replacement. Mr. Gates and Mr. Nolan subsequently completed, during October or November, 1995, those evaluations not yet prepared by Mr. Guthrie. Mr. White also prepared a number of evaluations in late November, 1995. These evaluations were prepared without the involvement or knowledge of the employees, and were not shared with them at the time. Mr. Nolan indicated that, prior to Mr. Guthrie's departure, he had been shown the performance evaluations completed by Mr. Guthrie during the summer of 1995.

12. At the meeting in late December, 1995, the members of the management team did not each have a copy of these performance evaluations. Instead, the manager who completed the evaluation (or, in Mr. Gates' case, the manager who had possession of them) read out the various scores given to the individual employees on the appraisals. Any comments written below the grade given to the employee were also read out to those in attendance. It was Mr. Nolan's testimony that the management team more than likely was fully briefed by the pertinent manager as to the full substance of each employee's appraisal at that meeting.

13. All of this is important, because Mr. Hewitt's performance appraisal, under the heading "attitude", is marked "resentful of policies and procedures: Belittles those who conform", the worst rating. Underneath, in the area reserved for the manager's comments, the following is written: "Pro-union attitude". It was Mr. Nolan's testimony that this comment was read out at the late December, 1995 management meeting. He subsequently stated that he could not recall whether the comment had, in fact, been read out and conceded only that it "quite possibly" had been. There is no doubt in my mind that it was. Mr. Nolan testified that he did not speak to Mr. Guthrie about this comment, because by the time the management team reviewed the performance appraisal Mr. Guthrie had left the employ of Coca-Cola. However, as noted above, it was also Mr. Nolan's testimony that he had previously seen the performance evaluations completed by Mr. Guthrie in the summer of 1995. Presumably, then, Mr. Nolan had been aware for many months of the comment contained in Mr. Hewitt's performance appraisal, and had not found it noteworthy to ask Mr. Guthrie about it during the previous summer.



14. Mr. Nolan advised the Board that by the end of this first meeting in late December, 1995, the management team had reached "tentative" decisions regarding who would be offered employment in Cobourg. He did not indicate in his testimony which of the employees had, as at that date, been tentatively determined as those to whom an offer of employment would be made, and those who were not to be so offered.

15. The management team's second meeting to discuss the employee evaluations, and to determine which employees would not be made offers of employment at Cobourg, was held in early February, 1996. The decisions regarding who would and who would not be offered employment were made by the group. The performance appraisals previously reviewed were considered once again by the management team. According to Mr. Nolan, the group considered, as well, which of the employees "were the best people to work with as management and the direction we had, to improve our business". At that meeting, the management team identified 10 employees who would not be made offers of employment. Mr. Nolan spoke to Mr. Sponagle and subsequently had termination notices prepared for these individuals. They were delivered to the employees on February 7, 1996. Mr. Hunter, who was not at work on that day, was called by Mr. Nolan regarding the situation 2 or 3 days later. Mr. Hunter was supplied with a copy of the letter by Mr. Nolan "a couple of weeks later".

16. Of the 10 individuals not offered employment at Cobourg, 6 had some involvement on the executive of the union, either past or present. Mr. Donoghue had been President of the Local since 1986. Mr. Pluard had been Vice-President of the Local and an outside steward since 1992. Mr. Hunter had been on the union's negotiating committee in 1992 (and had attended the December 14, 1995 meeting), and was the inside steward. Mr. Hewitt was the Chief Steward. Mr. Booth had been President of the Local for 10 years, prior to Mr. Donoghue's election in 1986. Mr. Kelusky had been the inside steward for approximately 10 years, up to 1992. He was also on the union's negotiating committee in 1985 when a one day strike occurred. It would also appear that two of the remaining four individuals not offered positions at Cobourg (who are not complainants in these proceedings) had, in the past, held some ceremonial positions with the union (such as Sergeant-At-Arms and Recording Secretary). With the exception of Mr. Kelusky, there was little dispute that the above-noted complainants were known by management of the distribution centre to have been on the union executive. Although I will touch on this below, I note here that the complainants' seniority with the employer ranged from 8 years to 28 years. Mr. Nolan stated that management staff were aware of the seniority of the employees at all times - that it was "a given".

17. Of the 14 individuals from Peterborough offered employment in Cobourg, none had been involved with the union at Peterborough. It would appear that one individual had been a union steward in Uxbridge when Coca-Cola had operations in that town. When that individual transferred to Peterborough he did not become involved with the union. Reference was also made to one individual who attended a meeting with the employer on behalf of the union, at the union's offices, in March, 1996. This person - Mr. Bridgewater - was offered a job in Cobourg. However, it appears that Mr. Bridgewater attended at the meeting because Mr. Nemeth had indicated to Mr. Krajaefski in a previous meeting held in February, 1996 that he had concerns about discussing the terms of voluntary recognition for the union in Cobourg with individuals who were not being hired for Cobourg.

18. During the course of his testimony, Mr. Nolan identified and discussed the employee evaluations of all but two of the bargaining unit staff at Peterborough (which evaluations could not be located), and identified the criteria utilized by the management team in determining whether each employee would be offered employment by Coca-Cola in Cobourg. There can be no doubt that by virtue of Mr. Nolan's position, his long service with Coca-Cola at Peterborough (approximately 26 years), and the relatively small size of the bargaining unit, Mr. Nolan knew each employee at the Peterborough location quite well. There can also be no doubt that the issue was not "numbers"; that is,

Mr. Nolan stated that the number of individuals to be hired from the Cobourg area was ultimately determined by reference to the number of individuals at Peterborough who accepted offers of employment in Cobourg. Each employee in the Peterborough bargaining unit had indicated to management a desire to work in Cobourg, and of the 14 offers, 13 employees ultimately accepted an offer and became employed there. Each of the complainants indicated that he would have gone to work in Cobourg had he been the recipient of an offer of employment.

19. The criteria used by the management team to identify those who would be offered jobs in Cobourg were described by Mr. Nolan as “a satisfactory appraisal on his evaluation” and the “demonstration of a commitment to work with the company and to help it grow its business”. Elaborating on this, Mr. Nolan indicated that the management team was looking for those individuals who would come to work, and who would work with both the employer and the management staff to put the employer’s strategy in place in order for the employer to improve. When asked how this was measured, Mr. Nolan answered by saying that “co-operation would sum it up”. He went on to note that some people would do what was asked of them, within reason, to increase business, whereas others would “whine, complain, and belittle the company and management and so on”, which made it difficult to run the business as desired in Peterborough. Mr. Nolan stated that an employee’s involvement in the union was not a factor taken into account.

20. This criteria is important, because Mr. Nolan identified the employee evaluations for the six individual complainants, and generally observed that they were below the average of other employees in the bargaining unit. Mr. Nolan elaborated on the evaluation of the six employees, identifying certain incidents which he recalled were of significance when discussing the employees with the management team. Counsel for the employer put together a chart for argument which, in a very rough way, identifies the relative performance of the employees in the bargaining unit as reflected by the performance evaluations. Without a doubt, the six complainants were, with one exception, marked lower overall on the evaluations, when compared with other employees. The significance, if any, of this will be commented on below.

21. The one exception to this pattern is Mr. Pluard. It was Mr. Nolan’s testimony that Mr. Guthrie had prepared Mr. Pluard’s evaluation, and he stated that the evaluation was “actually above the standard”. Mr. Nolan went on to state that the quality of Mr. Pluard’s work was very much acceptable to the employer. He also acknowledged that Mr. Pluard was utilized by the employer to train others in the DSIC position. Mr. Nolan concluded by stating that, based on the written evaluation, Mr. Pluard would have been offered a job in Cobourg. However, between December, 1995, and February, 1996, when the management team met, Mr. Pluard’s “attitude” (which had been evaluated earlier by Mr. Guthrie as “average”) had become very negative, and it was evident to Mr. Nolan that Mr. Pluard was “questioning [the employer’s] direction”. According to Mr. Nolan, it was a “risk” to take Mr. Pluard to Cobourg, and therefore it was determined not to offer Mr. Pluard a job. Mr. Nolan indicated that the “risk” related to his concern that, if Mr. Pluard were to become employed by Coca-Cola in Cobourg, his negative attitude would continue.

22. Asked to elaborate upon Mr. Pluard’s somewhat abrupt shift in “attitude”, Mr. Nolan stated that Mr. Pluard had questioned the employer in what it was doing with respect to the move to Cobourg. Explaining further, Mr. Nolan stated that through management staff he had heard that Mr. Pluard had made comments to other staff and to customers regarding the move to Cobourg, to the effect that the company “had left the employees in limbo”, and that the employees “did not know where they stood with the company”. He was also aware of statements to that effect made by Mr. Pluard to the media. Mr. Nolan stated that he was unaware of any other comments made by Mr. Pluard. In Mr. Nolan’s opinion, Mr. Pluard’s comments did not affect the quality of his work, but reflected a “soured” attitude.

In cross-examination, Mr. Nolan mentioned a newspaper article as part of the media coverage with which he had concerns.

23. In cross-examination of Mr. Pluard, the newspaper article in question was made an exhibit. Mr. Pluard stated that he had spoken to a reporter from the Cobourg Daily Star who had telephoned him in mid-January when Mr. Donoghue was out of the country. The Cobourg Daily Star printed a story on January 16, 1996, which contained the following comments from Mr. Pluard:

The news of the move to Cobourg surprised the members of Local 389 of the United Food and Commercial Workers, said local vice-president Larry Pluard.

"We don't know too much right now", he said this morning.

At a contract meeting last month, management said it would be taking "the A team" - meaning the plant's best workers - from Peterborough and hiring around it, Mr. Pluard said.

The employees are worried about their families and mortgages, he said.

Another meeting between the union and management will be held within two weeks, he added.

Mr. Nolan acknowledged in cross-examination that Mr. Pluard likely made the above statement at least in part because he was concerned about his job, and that in his capacity as a union officer it would be Mr. Pluard's role to speak to the media. He also conceded that from mid-December, 1995 to early February, 1996, the employees were, in fact, left in limbo "as far as who is going and who isn't".

24. During the course of testimony, Mr. Nolan identified the disciplinary records of the six complainants. The disciplinary records are (both individually and collectively) extremely limited in nature; the most severe discipline that was reflected in any of the complainant's files was a written warning. Mr. Nolan testified that one of the employees, Mr. Kelusky, had been suspended on one occasion, but that the discipline had been reduced to a written warning. Mr. Kelusky denied this in his testimony, and Mr. Nolan did not address the difference in testimony in his reply evidence. Mr. Kelusky's disciplinary record put before me by the employer does not reflect either a suspension or a written warning for the incident described by Mr. Nolan.

25. I note here that the evidence regarding the disciplinary records of the six complainants has limited significance in these proceedings, as it was Mr. Nolan's testimony in cross-examination that the disciplinary file of each of the bargaining unit employees was not referred to by the management team of the employer during the two meetings held to decide who would be offered positions at Cobourg. There can be no doubt that *some* of the incidents described in the disciplinary files were mentioned by Mr. Nolan during those discussions; but the actual files themselves, which accurately record the date of the incidents and the degree of discipline imposed, were not before the management team. Many of the incidents recounted by Mr. Nolan as being of significance to the management team's decisions were never reduced to writing and placed in the disciplinary files of the complainants. Obviously, they were never the basis for any discipline. I should note here that, similar to the case of Mr. Kelusky noted above, many of these incidents were disputed by the complainants when they testified.

26. Ultimately, the facility in Peterborough closed, in late March, 1996. On April 1, 1996, the employer's new facility in Cobourg became operational. Thirteen of the employer's former Peterborough employees commenced employment at the new site. The employer advertised for, and eventually hired, ten to twelve more employees for DSIC and general labour positions in the warehouse.

27. During the course of his testimony Mr. Nolan made certain references to the union and/or its executive members that I think warrant reproduction here. First, when counsel for the employer asked Mr. Nolan to explain what he took the comment "Pro-union attitude" in Mr. Hewitt's performance



appraisal to mean, he replied by stating that he “took it that on a lot of occasions when we tried to get work done by a number of employees like Rob it was like we had something held over our head - that they couldn’t or didn’t have to do it. I believe that is why the comment was put down”. I note this testimony because it is evident that Mr. Nolan felt that there were a “number of employees like Rob” at the Peterborough facility, and the implication is that these individuals have, as well, a “pro-union attitude”.

28. While commenting on the various performance appraisals, Mr. Nolan had very positive things to say of one Mr. Kevin Buckley. Amongst other things, he testified that Mr. Buckley, a DSIC, on one occasion had been willing to drive a long haul to the northern part of the province, which gave the employer an opportunity to improve its business in that region. This was identified as a positive factor in favour of Mr. Buckley. However, Mr. Nolan went on to say during his testimony that “Kevin was given a rough time by people in the union - Paul Donoghue - for agreeing to do it, to help out the company, and he became reluctant to do so in the future.” Again, I note this testimony because it is evident that, despite Mr. Nolan’s other testimony to the effect that he considered that all of the 24 employees in Peterborough bargaining unit were “involved with the union”, Mr. Nolan had notionally divided the employees into groups, one of which consisted of “people in the union”, as represented, in this case, by its President, Mr. Donoghue. Mr. Donoghue may or may not have reacted appropriately to Mr. Buckley’s willingness to make this trip (Mr. Donoghue did not deny the event in his testimony). For our purposes, what is significant is Mr. Nolan’s identification of “people in the union”.

29. Finally, there was some testimony directed towards the payment of incentives during the month of December, 1995. The employer offered both its inside and outside staff monetary incentives for meeting pre-set targets in each quarter of the year. It was the testimony of each of the complainants, except for Mr. Booth, who was off work in December, 1995 because of a compensable injury, that they earned at least a portion of the incentive payment during the last quarter of 1995; in fact, all but one received the entire incentive offered by the employer. In cross-examination, Mr. Nolan acknowledged the receipt of the incentive payments by the complainants, but pointed out that sales in December, 1995 had been particularly strong. Most importantly, though, Mr. Nolan stated that the receipt by employees of this incentive was discussed by the management team at the meeting in February, 1996. In minimizing the significance of the receipt of the incentive payments made in December, 1995, Mr. Nolan expressed the view that he “looked at the long term ... what the employee had done over the years”, and that there was no relevance to what had occurred during a brief period.

### **III. The Law**

30. There was very little dispute as to the legal principles applicable to these proceedings. The seminal authority is *The Barrie Examiner*, [1975] OLRB Rep. Oct. 745. At paragraph 17 of that decision, the following principle is identified:

What then is the extent of the burden of proof that has been shifted by statute to the respondent? The Act speaks of the burden of proof “that any employer ... did not act contrary to this Act”. In its earlier decisions, this Board has stated that, even if only one of the reasons for a discharge related to union activity, the discharge would nevertheless constitute a violation of the Act. ... In other words, the appearance of a legitimate reason for discharge does not exonerate the employer, if it can be established that there also existed an illegitimate reason for the employer’s conduct. This approach effectively prevents an anti-union motive from masquerading as just cause. Given the requirement that there be absolutely no anti-union motive, the effect of the reversal of the onus of proof is to require the employer to establish two fundamental facts - first, that the reasons given for the discharge are the only reasons and, second, that these reasons are not tainted by any anti-union motive. Both elements must be established on the balance of probabilities in order for the employer to establish that no violation of the Act has occurred.

This approach by the Board has survived the test of time, and there was no dispute that the determination of these proceedings, where the issue is the failure to offer employment, is governed by the principles outlined above.

31. As is noted in the Board's jurisprudence, determinations in these types of proceedings are often difficult ones to make, because employers are, generally, loathe to incriminate themselves, and because trade unions will make use of the provisions contained in the Act in circumstances where legitimate discharges from employment (or failures to hire, as occurred here) coincide with protected union activity. Because of this difficulty, the Board must very carefully consider all of the circumstantial evidence put before it, and use inferential reasoning to reach a conclusion as to the real motivation for the employer's conduct. Considerations taken into account by the Board include the existence of trade union activity and the employer's knowledge of it, the grievor's employment history and his or her involvement in trade union activity, unusual or atypical conduct by the employer following its knowledge of the trade union activity, the timing of the alleged unlawful activity, any other "peculiarities of the context surrounding an employer's actions", and the credibility of the witnesses (see *The Ontario Educational Communications Authority* [1976] OLRB Rep. Nov. 721 at para. 24, *The Corporation of the City of London* [1976] OLRB Rep. Jan. 990 at para. 14 and *Pop Shoppe (Toronto) Limited* [1976] OLRB Rep. June 299, at para. 5).

32. Also of significance is the importance of candour during the course of testimony. As is noted in *The Barrie Examiner*, cited above, at para. 22, one of the most effective ways for an employer to satisfy its obligations under the Act is for it to tell its story in a "frank and honest manner". In the event that one or more portions of the employer's testimony reflects a lack of candour, that will likely raise doubts as to the authenticity of the reasons provided by the employer.

33. Another principle evident from Board jurisprudence is that the Board should not infer, from unfair conduct, that the conduct is based upon anti-union motivations. That is, merely because an employer conducts itself in a manner which is, when viewed objectively, unfair, does not mean that a breach of the Act has been committed. Of course, unfairness may well be a reflection of an underlying anti-union motivation, and therefore an unfair act by an employer must be carefully considered by the Board, so as to determine the real reason for the conduct. But the Board must be careful to distinguish between what is unfair and what is unlawful. Only the latter conduct is subject to a remedy under the Act.

#### **IV. Decision**

34. I have carefully considered all of the evidence adduced by the parties to these proceedings. I do not propose to outline, in any great detail, the argument of counsel. Where necessary, I have set out, below, the argument of counsel on specific matters of significance.

35. In my view, the determination of these proceedings must commence with a consideration of the circumstances surrounding the failure to offer employment in Cobourg to Mr. Pluard. As noted above, Mr. Nolan indicated during his testimony that Mr. Pluard would have been offered employment in Cobourg but for the "souring" of his attitude during the period from December, 1995, to February, 1996. Mr. Nolan stated that the employer could not "risk" hiring Mr. Pluard in Cobourg because of his attitudinal change during those months.

36. I do not believe the testimony of Mr. Nolan, for many reasons. First, as I indicated to counsel for the employer during the course of argument, it appears to me that the decision of the management team to not offer employment in Cobourg to Mr. Pluard was, at the very best, an extremely arbitrary decision. Mr. Nolan would have me believe that he concluded that Mr. Pluard, by responding to a reporter in the manner reflected by the above-quoted newspaper article, and by allegedly making

similar comments to customers and other staff, had developed a sufficiently bad attitude to warrant termination of employment. I say “allegedly” here because there is no first-hand evidence before me to suggest that Mr. Pluard actually made any such comment to a customer or to another employee. In fact, Mr. Nolan did not even offer hearsay evidence to that effect. Mr. Pluard denied making any such comment to a customer during testimony and Mr. Nolan did not identify even one such customer in his testimony. And there is absolutely no evidence that Mr. Nolan spoke to Mr. Pluard at any time about the accuracy of the information he had received in this regard. Apparently, Mr. Nolan accepted rumours of Mr. Pluard’s conduct as truth.

37. However, even if I were to assume that Mr. Pluard did make such comments to customers and other staff, the comments are so utterly innocuous that I cannot fathom any reasonable person taking offence to them. In fact, Mr. Nolan conceded that Mr. Pluard’s observations regarding the employees being left “in limbo” were *true*. The comments were certainly not so offensive as to warrant the effective discharge of an employee of 10 years seniority with an “above average” performance evaluation.

38. As noted above, though, it is not a violation of the Act for an employer to act in an unfair or arbitrary manner when making its employment decisions. It is not my role to remedy unfair decisions made by employers within the boundaries of the Act. I am required to determine only whether someone on the management team, including Mr. Nolan, had in mind, at least in part, an anti-union motive when it was decided that Mr. Pluard would not be offered a position in Cobourg. If the answer to that question is “no”, then the application brought on his behalf must be dismissed.

39. The raw arbitrariness of Mr. Nolan’s determination that Mr. Pluard’s attitude had changed between December, 1995 and February, 1996, the innocuous nature of the comments which caused Mr. Nolan to reach that conclusion regarding Mr. Pluard’s attitude, and their admitted accuracy, cause me to be extremely suspicious about the true reason for the failure to offer Mr. Pluard employment. It is, as the Board’s jurisprudence notes, “peculiar” that such a comment, in and of itself, would have the effect of denying Mr. Pluard a position in Cobourg.

40. Of significance to my determination respecting Mr. Pluard are Mr. Nolan’s comments regarding the December, 1995 incentive payment, and the minimal effect of it on the decisions made by the management team. Mr. Nolan made it quite clear in cross-examination that he felt it more appropriate to look back over a longer period, to review how the employees in question had performed “over the years” rather than to focus on the short-run. Mr. Nolan may well be right to look to the longer term. But why not take the same approach to Mr. Pluard’s “sour” attitude? Why is it that an employee of some ten year’s seniority, who presumably had exhibited a satisfactory “attitude” throughout that ten year period, is denied an offer of employment that he would otherwise have received because of a “short-run” attitude problem? This is especially so when Mr. Nolan conceded that the comments made by Mr. Pluard in the media interview were legitimate. Mr. Nolan’s approach is inconsistent. This troubles me and suggests that “short-run” and “long-term” approaches to the various criteria were taken, alternatively, by the employer when it appeared convenient to do so.

41. Having considered all of the evidence, I am satisfied that the determination by the employer to not offer employment to Mr. Pluard at the new Cobourg facility was, at least in part, made because of Mr. Pluard’s activities on behalf of the union. I am not satisfied, on balance, that the employer would have offered Mr. Pluard a position in Cobourg if the decisions had, in fact, been made in December, 1995. I found it significant that Mr. Nolan did not identify during his testimony who had “tentatively” been determined to be a worthy of an offer of employment at Cobourg at the December, 1995 meeting of the management team. In my view, Mr. Nolan has grasped upon Mr. Pluard’s media interview in January, 1996 as a basis upon which to not offer employment in Cobourg to a member of the union



executive who had an “above average” performance evaluation. There is just no other conclusion which can be reasonably reached on all of the evidence.

42. Turning now to the consideration of the applications brought by the other five complainants, there is no doubt that each and every one of the applications should be considered independently from the others. Counsel for the employer stressed this point during argument, and I agree with her that there is no reason why all of the applications before me need necessarily stand or fall together.

43. That being said, counsel for the union submitted during argument that I had no alternative but to determine that the employer had not satisfied its onus under the Act to establish, on balance, that its decision to not offer each of the complainants a position in Cobourg was without anti-union taint. Counsel noted that the employer had not called, as witnesses, the authors of the various performance appraisals - that is, Messrs. Guthrie, Way, White or Gates. He pointed out that Mr. Hewitt’s evaluation (which it will be recalled notes on its face, under the heading of “attitude”, the words “Pro-union attitude”) was written by Mr. Guthrie, who authored a number of the evaluations, including those of Messrs. Booth, Donoghue, Kelusky, and Pluard. If Mr. Guthrie had anti-union sentiments when writing out his evaluations, the negative scores or comments on *any* of the forms completed by him, even if they do not make a patently obvious negative reference to the union, could be tainted by such sentiments. Any reliance by the management team on these documents would be, in these circumstances, reliance upon documents tainted by anti-union sentiments. In counsel’s submission, it was incumbent upon the employer to put the authors of all of the pertinent evaluations onto the witness stand to satisfy the Board that no anti-union sentiments are reflected by any parts of the evaluations. Failure to do that is fatal.

44. Having considered this argument quite carefully, I am of the view that counsel for the union is quite right in his analysis. I am charged with determining whether the employer’s decision to not offer employment to the complainants is, in any way, affected or tainted by anti-union motivation. The employer must satisfy me, on balance, that the decisions made respecting who would be offered a position in Cobourg, and who would not be offered such a position, were made without reference to the complainants’ union activities. There can be no doubt, based on Mr. Nolan’s evidence, that the scores and the comments made on the evaluation forms were known by and discussed amongst all of the individuals on the management team.

45. Mr. Guthrie, who authored almost all of the complainants’ performance evaluations, felt it significant to note on Mr. Hewitt’s performance appraisal that he had a “Pro-union attitude”. He gave Mr. Hewitt the lowest possible score under the heading of “attitude”. Mr. Booth was also given the same, lowest possible score under that heading, but no comments are made by Mr. Guthrie on Mr. Booth’s form. Are Mr. Booth’s previous union activities reflected by the score? Are the low scores of others, or some of the negative comments made on their evaluations, a reflection of Mr. Guthrie’s apparent anti-union animus? It is a possibility. I cannot be satisfied that they are not. Mr. Guthrie may have meant something other than the plain meaning of the words “Pro-union attitude” inscribed on Mr. Hewitt’s evaluation. Or perhaps not. But I cannot know without having heard Mr. Guthrie’s explanation for the comment. Neither could the management team of the employer. These same concerns apply to each and every negative score on the evaluations completed by Mr. Guthrie, and for each and every negative comment on the appraisals. I cannot be satisfied that they are not, themselves, motivated by anti-union sentiment.

46. Ought the same analysis be applied to the evaluations prepared by other managers of the employer at the Peterborough facility? In my view, the answer to this question must be “yes”, in the circumstances of this case. As noted above, it is incumbent upon the employer in these proceedings to satisfy me, on the balance of probabilities, that anti-union motivation had absolutely no effect on the

decision to not offer employment to any of the six complainants at the Peterborough facility, including Mr. Hunter, whose performance evaluation was completed by Mr. White in November, 1995. Mr. White did not put a comment on Mr. Hunter's evaluation such as that which appears on Mr. Hewitt's evaluation. However, in light of the "Pro-union attitude" comment on Mr. Hewitt's performance appraisal, written by Mr. Guthrie (and Mr. Nolan's awareness of it from the summer of 1995), and the evident anti-union animus reflected by the decision of Mr. Nolan to not offer employment in Cobourg to Mr. Pluard, I am not satisfied that the performance evaluation of Mr. Hunter is untainted from anti-union animus. The animus which is reflected on the face of Mr. Hewitt's performance appraisal may, or may not, have been present in Mr. White's mind when he completed the performance appraisal of Mr. Hunter. In light of the existence of anti-union animus in the other decisions made regarding employment in Cobourg, and the high level of suspicion which naturally arises from the fact that none of the union's executive (past or present) were offered a position in Cobourg, Mr. White ought to have testified to establish that his evaluations were free of anti-union animus. He did not do so.

47. Accordingly, I am of the view that the application filed on behalf of Mr. Hunter must be allowed as well.

48. I should note here that, even if I were not persuaded by union counsel's argument regarding the possible "taint" contained in the performance appraisals, I would have reached the same conclusion with respect to all six of the complainants. My comments respecting Mr. Pluard's situation are set out above, and I will not repeat any of those observations. With respect to the other five complainants, as I noted above it is evident that Mr. Nolan was of the view that they were not members of "the A team" and therefore ought not to be offered employment in Cobourg. Assuming for the sake of argument that all of the performance appraisals are a fair and untainted assessment of the performance of bargaining unit employees, Mr. Nolan and his management team may have quite reasonably believed that the five complainants were not "team players" and thus were not worthy of an offer of employment in Cobourg.

49. The difficulty that I have, however, is that Mr. Nolan's testimony barely hid (and at times in fact failed to hide) his disdain for those who ran the local union. Whether or not an employer "likes" unions is irrelevant, and the Board has historically taken notice of the fact that most employers would prefer to operate without a union (see, for example, *David Chapman's Ice Cream Limited* [1990] OLRB Rep. July 778, at para. 9). However, Mr. Nolan's testimony reflected, as noted above at paragraphs 27 to 29, a difference in his mind between "bargaining unit employees" (who were not troublesome) and "people in the union" or "employees like Rob" (who were troublesome). Once again, in light of the identity with the union of those individuals who were not offered employment in Cobourg when compared with those employees who were offered a position, the significant seniority and experience of those individuals not offered employment, and in light of the evident anti-union animus reflected by the decision relating to Mr. Pluard (and the lack of candour exhibited by Mr. Nolan in that regard), I am not satisfied that the decision to not offer the five complainants (other than Mr. Pluard) employment in Cobourg was free of anti-union animus.

50. For these reasons, I have determined that the employer has violated section 72(a) of the Act, and that all six of the complainants ought to be successful in the applications brought on their behalf. Furthermore, the application brought by the union in its own name alleging a breach of section 72(a) of the Act ought to be successful as well.

## **V. Disposition**

51. These applications are therefore allowed. As noted above, counsel for the parties indicated that I should remain seized of these proceedings in the event that a remedy could not be agreed upon. I

will remain seized for that purpose. Should it be necessary to schedule one or more dates for hearing, counsel should contact the Registrar of the Board.

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**3792-95-U International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Applicant v. Famous Players Inc., Responding Party**

**Unfair Labour Practice - Following making of first collective agreement between movie theatre chain and union representing “front of the house” employees, employer ending certain practices or benefits including free movie passes and free access to pre-screening of movies prior to exhibition for employees covered by the agreement - Board concluding that employer’s conduct improperly motivated and illegal - Complaint allowed - Cease and desist order issuing**

**BEFORE:** *Janice Johnston*, Vice-Chair, and Board Members *Orval R. McGuire* and *P. V. Grasso*.

**APPEARANCES:** *Bernard Fishbein, Lesha Van Der Bij, J. Wood, L. Miller* and *D. Marcone* for the applicant; *Harry Freedman* and *Dough Smith* for the responding party.

**DECISION OF THE BOARD;** January 20, 1997

1. This is an application pursuant to section 96 of the *Labour Relations Act, 1995* (the “Act”) alleging a violation of sections 70, 72, 76, 87 and 17 of the Act.
2. At the hearing scheduled to deal with this matter, the parties provided the Board with the following agreed statement of facts:

AGREED STATEMENT OF FACTS

(a) The Applicant commenced an organizing campaign for “front-of-house” employees at various movie theatre locations operated by the Responding Party. The Applicant was certified at the following locations:

- (i) OLRB File No. 3182-94-R  
Britannia Six Theatre, City of Ottawa, on or about December 20, 1994.
- (ii) OLRB File No. 3467-93-R  
Gloucester 5 Cinemas, City of Ottawa, on or about February 10, 1994.
- (iii) OLRB File No. 0100-95-R  
Capitol Square Cinemas, City of Ottawa, on or about October 2, 1995.
- (iv) OLRB File No. 0099-95-R  
Rideau Centre Cinemas, City of Ottawa, on or about October 2, 1995.
- (v) OLRB File No. 2236-94-R  
Uptown Theatre, Municipality of Metropolitan Toronto, on or about December 6, 1994.
- (vi) OLRB File No. 3412-93-R  
Eglinton Theatre, Municipality of Metropolitan Toronto, on or about February 10, 1994.



- (vii) OLRB File No. 1143-95-R  
400 Drive-In, City of Vaughan, on or about August 2, 1995.
- (vii) OLRB File No. 4709-94-R  
Jackson Square Cinemas, City of Hamilton, on or about October 2, 1995.

(b) In the initial applications for certification for the Capitol Square, Rideau Centre and Jackson Square Cinemas (OLRB File Nos. 3719, 3847 and 3916-94-R) the Responding Party challenged the form of membership evidence the Applicant had filed in support of the application. The challenge was successful and the Board, by decision dated April 25, 1995 ([1995] OLRB Rep. April 397) dismissed the applications. When the applicant filed subsequent applications using different forms of membership evidence, the Responding Party challenged that membership evidence as well. Those challenges were dismissed by the Board by decision dated October 2, 1995. The Responding Party has sought reconsideration of various of the Board's certificates based upon the decision in [1995] OLRB Rep. April 387. That matter was heard by the Board February 21, 1996. No decision has been issued by the Board as of this date.

(c) When the Applicant served notice to bargain on or about February 16, 1994, it requested the Responding Party to negotiate the various locations together in one set of negotiations for one collective agreement. The Responding Party refused on the basis that each certificate should be bargained separately. As a result, the Applicant subsequently made an application to combine the bargaining units under what was then Section 7 of the *Labour Relations Act* (OLRB File No. 0158-95-R).

(d) Although a combination application was scheduled for hearing, the parties agreed to adjourn it pending the release of the decision in a similar application involving *Cineplex Odeon Corporation* (OLRB File No. 4534-93-R). After the decision in *Cineplex Odeon Corporation* [1994] OLRB Rep. July 824 was released on or about July 22, 1994, the Responding party took the position that the outcome did not govern the facts in the application relating to it. As a result, a combination application was rescheduled for hearing before the Board. The Board noted that the facts "were virtually indistinguishable" from the *Cineplex Odeon* case and chose to follow the decision in *Cineplex Odeon Corporation* and by decision dated November 23, 1994 ([1994] OLRB Rep. Nov. 1527) the Board chose to combine the bargaining units.

(e) Negotiations between the Applicant and the Responding Party for a collective agreement began on or about March 9, 1995, the first date that the Responding Party was available. Two earlier meeting dates were cancelled at the request of the Responding Party.

(f) Numerous and lengthy negotiation meetings were held before a collective agreement was ultimately concluded, effective November 7, 1995 (the "Collective Agreement").

(g) Prior to the Collective Agreement, the Responding Party had provided its front-of-house employees at various locations throughout Ontario with free passes which allowed them to attend movies at the Responding Party's various locations.

(h) Following the execution of the Collective Agreement, the Responding Party immediately ceased providing free passes to the front-of-house employees covered by the Collective Agreement.

(i) When counsel for the Applicant was advised of this development he contacted counsel for the Responding Party in the hope that the matter could be resolved. By letter dated December 7, 1995, counsel for the Responding Party wrote to counsel for the Applicant confirming that the Responding Party would no longer issue free passes to those employees covered by the Collective Agreement since such movie passes were not required by the Collective Agreement. A copy of the letter is attached.

(j) The Responding Party took the position that it was not required to continue to provide the free passes by virtue of Article 17.01 of the Collective Agreement:

This Agreement constitutes the complete Agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, that may have existed up to the effective date of this Agreement. It expresses the obligations and rights of the

Employer and the Union during its term. Neither party relies on any statements or representations unless they are expressly set out in this Agreement.

(k) Section 17.01 of the Collective Agreement was proposed by the Responding Party. There was limited discussion and negotiations on this section and primarily only during the conciliation meeting of August 13, 1995. The Applicant, initially refusing to agree to this proposal, characterized it as an anti-estoppel clause. The Responding Party acknowledged this and maintained its position that the provision be included in the Collective Agreement. The Responding Party asserted that since there were several locations that would be covered by the Collective Agreement, it could not risk being subject to grievances concerning practices that could vary from theatre to theatre, each with a different individual manager with their own discretion and whose individual theatre practices the Responding Party might not even be aware of. Ultimately, later that day, the Applicant agreed to include section 17.01. There was never a prior agreement or understanding, oral or written, between the Applicant and the Responding Party with respect to movie passes. The issue of movie passes was never discussed or raised in negotiations. There were never any statements or representations made by either party with respect to movie passes during negotiations.

(l) The Responding Party is also bound to collective agreements in all of these same locations with Local 173 or Local 303 of the Applicant covering the projectionists at those locations. For example, the Local 303 collective agreement with the Responding Party contains the following provision:

1.02 Except for the express provisions of applicable legislation, this Agreement represents all the terms and conditions which govern the relations between the Union, the Employer and those employees of the Employer to whom this Agreement applies. No other or future terms and conditions, express or implied, are applicable or enforceable, except where, to the extent of, further mutual agreements which are committed to in writing by the parties and expressly appended to this Agreement.

The Local 173 Agreements in the Toronto and Ottawa areas contain the exact same provision. The Responding Party is bound by collective agreements with Local 173 or Local 303 at all of its locations throughout the Province of Ontario in respect of projectionists.

(m) The Responding Party has and continues to allow its individual managers the discretion to provide free passes to attend movies at the Responding Party's various locations to the projectionists covered by these agreements.

(n) The terms and conditions of employment of the front-of-house employees of the Responding Party who are not covered by the Collective Agreement differ from the terms and conditions of employment of the bargaining unit employees. The bargaining unit employees are eligible to receive a higher rate of pay based upon their length of service. Furthermore, the bargaining unit employees have seniority rights in respect of scheduling, lay-off and re-call from lay-off and also have access to a grievance and arbitration procedure while the front-of-house employees not covered by the Collective Agreement do not.

(n)(i) The Responding Party provided all of its front-of-house employees with a 25¢ beverage cup benefit prior to the execution of the collective agreement. That benefit is continued under the collective agreement in accordance with section 13.08. The Applicant had initially proposed a clause in the collective agreement granting a discount on all concession items, including beverages, for all front-of-house staff. The Responding Party refused and ultimately section 13.08 was agreed upon. There was no discussion of section 17.01 during the negotiations about section 13.08. Section 17.01 formed part of the Responding Party's proposals from the outset. In fact, section 13.08 was agreed upon prior to the specific negotiations about section 17.01. Conversely, there was no discussion about section 13.08 during the negotiations about section 17.01.

(o) The Responding Party has had a practice known as "run-throughs". A run-through is when a print of the movie is run-through or screened prior to its exhibition for the public by a projectionist to ensure that the print has no defects or flaws, and that the projectionist has put the film together in the correct order. Customarily, the run-through would occur late in the evening or in the daytime hours when the theatre was not open to the public. In the Hamilton area, members of the staff have been permitted to attend at the run-through and view the movie for no charge.

(p) Since the execution of the Collective Agreement, at the Jackson Square Cinema, the Responding Party has instructed that no one other than the projectionist is now permitted to attend at the run-through. Other employees at the other locations not covered by the Collective Agreement in the Hamilton area are still permitted to attend run-throughs for no charge.

DATED AT Toronto THIS                      DAY OF                      , 1996.

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INTERNATIONAL ALLIANCE  
OF THEATRICAL STAGE,  
EMPLOYEES AND MOVING  
PICTURE MACHINE  
OPERATORS OF THE UNITED  
STATES AND CANADA

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FAMOUS PLAYERS INC.

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#### APPENDIX A

Dear Mr. Fishbein:

**Re: Famous Players Inc. - Jackson Square Cinemas**

You and I spoke last week about a concern you had with respect to bargaining unit employees at the above location being denied movie passes.

I raised the concern you expressed to me with the Company. I am advised that the Company is no longer issuing movie passes to those employees since the Company is not obliged to do so under the collective agreement. The Company's obligations are set out in the collective agreement. Section 17.01 of the collective agreement makes clear that any prior understandings that may have existed prior to the effective date of the collective agreement are superseded by the collective agreement. For example, employee entitlement to purchase beverages at a special price for their break was negotiated. Continuation of movie passes was not. Simply put, the Company is not obliged to issue movie passes to employees at Jackson Square who are subject to the collective agreement.

I trust that this makes clear the Company's position in this matter.

Yours very truly,  
Harry Freedman

3. After the Board had had an opportunity to review the agreed to facts, we proceeded to final submissions. In final argument the parties referred to several additional articles in the Collective Agreement. They read as follows:

- 2.03 If during the term of this Agreement, should the Ontario Labour Relations Board revoke the Union's certificates in respect of the Britannia Six Theatre, the Gloucester Cinemas, Uptown Theatre or Eglinton Theatre, that theatre location shall be deleted from section 2.01. Similarly, should the Board certify the Union during the term of this Agreement in respect of any of those theatre locations following the revocation of the Union's certificate, that theatre location shall be added to section 2.01.
- 2.04 Unless the parties enter into a separate agreement in writing that provides that the theatre locations listed in section 2.01 above comprise one bargaining unit, each theatre location listed in section 2.01 above constitutes a separate bargaining unit.
- 13.08 Employees who are at work shall be permitted to purchase beverages for their break with a "staff cup" at a cost of twenty-five (25) cents for each beverage.

4. The relevant sections of the *Labour Relations Act, 1995* are as follows:



17. The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.

**70.** No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

**72.** No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

**76.** No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

**87. (1)** No employer, employers' organization or person acting on behalf of an employer or employers' organization shall,

- (a) refuse to employ or continue to employ a person;
- (b) threaten dismissal or otherwise threaten a person;
- (c) discriminate against a person in regard to employment or a term or condition of employment; or
- (d) intimidate or coerce or impose a pecuniary or other penalty on a person, because of a belief that the person may testify in a proceeding under this Act or because the person has made or is about to make a disclosure that may be required in a proceeding under this Act or because the person has made an application or filed a complaint under this Act or has participated in or is about to participate in a proceeding under this Act.

**(2)** No trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions shall,

- (a) discriminate against a person in regard to employment or a term or condition of employment; or
- (b) intimidate or coerce or impose a pecuniary or other penalty on a person, because of a belief that the person may testify in a proceeding under this Act or because the person has made or is about to make a disclosure that may be

required in a proceeding under this Act or because the person has made an application or filed a complaint under this Act or has participated in or is about to participate in a proceeding under this Act.

96. (5) On an inquiry by the Board into a complaint under subsection (4) that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to the person's employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization.

5. Counsel for the employer argued that the issue before the Board in this case, was whether it was an unfair labour practice for an employer, after having executed a collective agreement containing a clause such as article 17.01, to discontinue the practice of issuing free movie passes given that the union didn't ask for the practice to continue. He suggested that the labour relations community would be shocked if a union who didn't raise something in bargaining could come to the Board and ask for it. In his view, the terms and conditions of employment for this group of employees was spelled out in the collective agreement. In reviewing the sections of the Act which the applicant relies upon, counsel suggested that the only section which might raise some concern was section 72. However, in his view, the elements of section 72 have not been satisfied as there is no connection between union membership and what took place in this case. There is no evidence of any threats, penalties or compulsion. Counsel argued that there is no evidence of any message being sent by the employer such as, get rid of the union and you'll get the passes back. In counsel's view section 17 of the Act was inapplicable as the parties had successfully bargained a collective agreement which had been signed nine months ago.

6. In reviewing the agreed to facts, counsel for the employer pointed out that there was no suggestion that the employer had committed an unfair labour practice or exercised any powers in an improper way leading up to the union's ultimate certification. While he conceded that the employer had raised issues and taken positions that may have extended the litigation process, they were entitled to do so. Counsel also admitted that the employer had engaged in hard bargaining but pointed out that after six months of bargaining (not unusually protracted for first contract negotiations) the parties were able to reach agreement on some complex issues and sign a collective agreement. Therefore, there is no history of unfair labour practices being committed by the company and no history from which the Board could infer an anti-union animus.

7. Turning to the effect of article 17.01, counsel pointed out that it was part of the company's proposals from the beginning. Both parties were experienced negotiators. Counsel argued that it was not up to the employer to tell the union what to ask for. In his view the language of article 17.01 makes it clear that all prior agreements are subsumed by the collective agreement. He pointed out that the union negotiated article 13.08 which resulted in the continuance of a long standing practice. The issue with regard to the free passes never came up and in counsel's view, if the union wanted the practice to continue, they should have sought that. It was not up to the employer to raise it. In the same way that the union sought and obtained the continuation of the beverage discount, they could have raised the issue of the movie passes and did not. Counsel stressed that it was important to note that there are trade offs in collective bargaining. If the union had asked for the continuation of the free passes, they might have gotten it and/or it might have been a trade off for something else.

8. In dealing with the fact that the non-union front-of-house employees still get the free passes, employer counsel suggested that it is not illegal to have different terms and conditions of employment for represented and unrepresented employees. Although the unrepresented employees continue to receive the passes, they do not have many of the benefits enjoyed by the bargaining unit employees. Although individual theatre managers can provide free passes to the projectionists (members of a different bargaining unit), counsel pointed out that it is important to note that there is generally one projectionist and at most two projectionist per theatre, but that there are numerous front-end employees.

To continue the practice of issuing free passes to the front-end staff would result in a loss of revenue. With regard to the discontinuance of the free admittance of staff to “run throughs” at the Jackson Square Cinema in Hamilton, counsel argued that this approach is consistent with the elimination of the free passes. Once again, he suggested that if the employees wanted to ensure the continuance of this practice they should have raised the issue during collective bargaining.

9. Counsel referred the Board to two cases, *Major Foods Ltd. and Retail, Wholesale & Department Store Union, Local 1065* 7 L.A.C. (4th) 129 and *Inco Limited*, [1984] OLRB Rep. Nov. 1584. In the *Major Foods* case, an arbitrator concluded that the company, in providing a benefit to its non-union employees (a dental plan) that it did not give to its unionized workers, was not motivated by an anti-union animus. Counsel suggested that the analysis was equally applicable to the facts before us. In the *Inco Limited* case, the Board rejected the proposition that it is a violation of what now is section 72(a) of the Act for an employer to give benefits to unrepresented employees that are not also being received by employees who are represented by a trade union. Although the Board in the *Inco Limited* case alluded to the fact that it might be a breach of the Act in certain instances for an employer to refuse to agree to provide unionized employees with benefits enjoyed by unorganized employees, counsel argued that this was not the case before us as the employer had never refused to provide the passes as the union had never raised the issue in negotiations. Counsel argued that, although this case may have the superficial appearance of unfairness, there is no basis for concluding that the employer violated the Act.

10. Counsel on behalf of the union argued that it is important for the Board to look at the context in which this application arose. To summarize briefly: the union organizes and is successful; the employer challenges the cards and wins; the union applies with new cards and ultimately wins; the employer refuses to combine the bargaining units until it is forced to by the Board; and negotiations are slow to begin as the employer is unavailable. Although counsel conceded that there was no history of unfair labour practices on the part of the employer that the union could point to, he suggested that, to use his words, the employer “relentlessly resisted the organizing campaign” and stalled the negotiations for as long as possible. Immediately after the collective agreement was signed, all of the employees covered by the collective agreement were denied the free movie passes which, counsel pointed out, are still given to the unrepresented employees and the projectionists. At one theatre in Hamilton, the employer went one step further and denied the admittance of employees to “run throughs”. Counsel characterized the employer’s contention that the free movie passes resulted in revenue loss as ridiculous and pointed to the fact that there was no support for this in the agreed to facts. If the employer wanted to assert some sort of financial cost, it should have been included in the agreed to facts and wasn’t.

11. Union counsel argued that the employer’s conduct was a violation of section 70, as the cutting off of the free passes without any justification interfered in the representation of the employees by the trade union. The employer’s conduct violates section 72(a), as the employer is discriminating against those people who joined the trade union by taking away the free movie passes and violates section 72(c) as eliminating the passes is a pecuniary penalty. Section 87 of the Act is applicable to this case, as in counsel’s view, employees are being discriminated against because they applied for certification.

12. It is not surprising that the employer does not admit to an anti-union motive for its actions in denying the movie passes. Counsel for the union pointed out that he did not expect the employer to agree that it was trying to send a message to the newly organized employees. However, he urged the Board to conclude that the employer’s reasons for eliminating the passes were not devoid of anti-union animus and that the employer had not met its onus pursuant to section 96(5) of the Act. There is no economic basis for the decision to eliminate the passes, the employer merely wanted to “get in a dig at employees and show them what happens when you join a union”, to use his words. In counsel’s view,



article 17.01 does not provide a defence to the employer as a party cannot contract out of the Act. Union counsel interpreted article 17.01 as not referring to agreements between the employer and the individual employees, but to prior agreements between the union and the employer. As such, 17.01 was not intended to cover practices such as the issuance of free movie passes to staff. As noted in the agreed to facts, the issue of the movie passes was never raised in negotiations and a different rationale for article 17.01 was given by the employer during negotiations.

13. Union counsel pointed to the fact that despite similar language in the collective agreement covering projectionists, they still get free movie passes. As he put it, “a deal is a deal” is not true for the projectionists, whereas the employer seeks to hold the front-end staff to the terms and conditions of the collective agreement. Counsel questioned how far the company would pursue this approach of denying employees anything not included in the collective agreement, as it is impossible to include each and every term and condition of employment in the collective agreement. In counsel’s view, if the employer was planning to take away the movie passes, the union should have been told this so that discussions could have taken place. The company’s failure to raise this issue amounts to bargaining in bad faith in his view. In support of this proposition counsel referred the Board to *Westinghouse Canada*, [1980] OLRB Rep. April 577. Counsel suggested that the reason for the denial of admission to employees to the run throughs at the Jackson Square Cinema in Hamilton cannot be characterized as anything but anti-union. He took the view that neither case put forward by the employer was helpful and that they were distinguishable from the case before the Board. After referring to the comment by the Board in the *Inco Limited* case (supra) that in some circumstances where an employer refused unionized employees benefits given to non-unionized employees it could constitute an unfair labour practice, counsel urged the Board to conclude that the circumstances in this case fit the situation alluded to in the *Inco Limited* case (supra).

14. In support of his position counsel for the union referred the Board to *Johnson Controls Limited*, [1971] OLRB Rep. Oct. 643 and to the *Cambridge Reporter*, [1993] OLRB Rep. Oct. 1035. In the *Johnson Controls* case, although the employer made changes to the employee pension plan for legitimate business purposes, the Board nevertheless concluded that the employer in treating the unionized employees differently from the non-unionized employees was acting contrary to the Act. Counsel also referred the Board to the *Cambridge Reporter* decision, which in his view is supportive of the proposition that the employer is entitled to treat employees differently but their motivation in so doing, may constitute a violation under the Act.

15. In reply, counsel for the employer argued that the *Cambridge Reporter* case was distinguishable from the facts before us, as in it the Board had direct evidence of anti-union animus and was dealing with a situation in which no collective agreement was in place. He pointed out that in the *Johnson Controls* case, we do not know whether the collective agreement contained an article comparable to article 17.01. The Board in the *Johnson Control* case was dealing with arrangements beyond the collective agreement. If it had had before it language in the collective agreement similar to article 17.01, the result would have been different in counsel’s view.

16. Employer counsel characterized the interpretation of article 17.01 put forward by the union as nonsensical. While acknowledging that article 17.01 was intended to deal with different arrangements which might exist in different theatres, clearly it was also intended to terminate all prior agreements and understandings affecting employees. Article 17.01 was intended to and does supersede all prior agreements and is not restricted to agreements between the union and the employer. In Counsel’s view, the fact that the employer still allows the projectionists free passes should lead to the opposite inference than that suggested by counsel for the union. If the employer was anti-union and out to get its unionized employees, then it should have denied the free passes to all unionized employees. The practice of free passes ended for the front-end employees as the collective agreement superseded it. Counsel argued

that in the face of article 17.01, the union should have raised the issue of the free passes if it wanted to ensure the continuation of the practice. The employer did not give the benefits attained by the unionized employees (i.e. seniority in layoffs, scheduling, etc.) to the non-union staff and there is nothing illegal about having different terms and conditions of employment for unionized versus non-unionized staff.

17. In conclusion, counsel argued that the employer has not acted illegally in this case. Although the employer is being tough, this is consistent with its previous activities which were not anti-union. The collective agreement provides the terms and conditions of employment for the unionized employees and there is nothing in the collective agreement about free movie passes. The union did not ask for it, so the Board should not give it to them.

## **DECISION**

18. Before turning to the specifics of this case it is helpful to briefly review the approach taken by the Board when an employer decision is alleged to constitute an unfair labour practice and a violation of the Act. In the *Pop Shoppe (Toronto) Limited*, [1976] OLRB Rep. June 299, the Board stated:

4. Section 79(4a) of The Labour Relations Act places the legal burden upon the employer in complaints such as the one before us, to satisfy the Board, on the balance of probabilities, that it has not violated the Act. In order for the Board to find that there has been no violation of the Act it must be satisfied that the employer's actions were not in any way motivated by anti union sentiment; the employer's actions must be devoid of "anti union animus". (See the *Bushnell* case [1944] OR (2d) at page 442). The employer cannot engage in anti union activity under the guise of just cause or under the guise of business reasons. Regardless of the viable non-union reasons which exist the Board must be satisfied that there does not co-exist in the mind of the employer an anti-union motive. The employer best satisfies the Board in this regard by coming forth with a credible explanation for the impugned activity which is free of anti union motive and which the evidence establishes to be the only reason for its conduct (See *Barrie Examiner* [1975] OLRB. Rep. Oct. 745 and *The Corporation of the City of London* [1976] OLRB Rep. Jan. 990).

5. In cases such as these the Board is very often required to render a determination based on inferential reasoning. An employer does not normally incriminate himself and yet the real reason or reasons for the employer's actions lie within his knowledge. The Board, therefore, in assessing the employer's explanation must look to all of the circumstances which surround the alleged unlawful acts including the existence of trade union activity and the employer's knowledge of it, unusual or atypical conduct by the employer following upon his knowledge of trade union activity, previous anti union conduct and any other "peculiarities". (See *National Automatic Vending Co. Ltd.* case 63 CLLC 16,278). If, having regard to the circumstantial evidence, the Board cannot satisfy itself that the employer acted without anti union motivation, the Board must find that the employer has violated the Act. These determinations, however, are most difficult and require an incisive examination of all the evidence. Not only must the Board "see through" the legitimate reasons which often co-exist with the unlawful, but at the same time the Board must be capable of distinguishing between the unlawful and the unfair. The Board cannot find, and neither should it automatically infer, that an employer who has engaged in conduct which is unfair has violated the Act even if the unfair treatment is coincidental with an organizing campaign. However, because of the nature of the proceedings and the frequent requirement for inferential reasoning the Board would be delinquent if it did not consider, for purposes of drawing an adverse inference, unfair treatment during an organizing campaign of itself or in conjunction with the other circumstantial evidence. The Board, therefore, must be acutely sensitive to all of the circumstances and must not be unduly swayed by either the co-existence of unfair treatment or by the co-existence of legitimate reasons for the employer's conduct in determining if The Labour Relations Act has been violated.

19. The employer in this case, relying on article 17.01 of the collective agreement, has ended the practice of providing free movie passes to the newly organized front-of-house staff. The decision to terminate the practice was implemented immediately after the first collective agreement between the parties was signed. After considering the innovative submissions of counsel for the union regarding the interpretation of article 17.01, we are of the view that article 17.01 should not be restricted in the

manner in which he suggests. In our view, it means what it says, namely that the collective agreement constitutes the complete agreement between the parties and supersedes all prior agreements and undertakings. Prior agreements that are covered by article 17.01 include the provision of free movie passes to front-of-house staff. As there is no specific language in the collective agreement dealing with the movie passes, in our view article 17.01 applies to the situation.

20. Had we been sitting as a Board of Arbitration charged with the task of interpreting article 17.01, our task would likely have ended at this point. However, that is not our role in this case. As the tribunal responsible for ensuring compliance with the Act, we must make a different determination. Our function in this case is not to interpret a provision in the collective agreement but to decide whether or not an unfair labour practice has been committed. Accordingly, the issue before us is whether or not the employer, in denying the free movie passes to the unionized front-of-house staff, was motivated not only by a desire to comply with the collective agreement but also an anti-union animus or intention to penalize this group of front-of-house employees.

21. The employer, as is the norm in cases of this nature, denies that it was in any way motivated by an anti-union animus in eliminating the movie passes. The Board therefore, as is usually the case, must reach its own conclusions regarding the employer's motives. In assessing motive, the Board looks at the reasonableness of the employer's explanation for its conduct and assesses whether the employer's actions are unreasonable or unduly harsh in light of all the circumstances. In this case the employer asserts that it was complying with the collective agreement and in particular article 17.01. As noted, we accept that the employer's interpretation of article 17.01 is the preferable one, and that it was one reason for the denial of the free movie passes.

22. In reviewing the history between these parties, clearly the employer has not ever been found to have crossed the line and committed an unfair labour practice. Both parties agree that the employer has taken a tough stance with the union. Counsel for the union characterizes the employer's conduct as "relentlessly resisting" the organizing campaign. Employer counsel points out that the denial of movie passes is consistent with the previous approach taken by the employer which was not and has not been found to be anti-union. Obviously, in and of itself there is nothing illegal about the employer applying the terms and conditions of the collective agreement.

23. However, our task in this case is to determine whether the employer has established that the only reason it no longer provides free movie passes to the unionized front-of-house staff, is because it is no longer required to under the collective agreement. Or to put it another way, was the employer only motivated by a desire to assert its strict contractual rights when it took away this privilege, or were they motivated in some way by a desire to penalize the newly organized front-of-house employees. Regardless of whether we agree with the employer's interpretation of article 17.01, namely that there is nothing in the collective agreement that entitles the front-of-house employees to the movie passes, we still must examine the employer's motives in eliminating this privilege in the manner and in the circumstances in which it did.

24. Despite similar language in the collective agreement which determines the terms and conditions of employment for the projectionists, the employer nevertheless has continued the practice of giving the individual theatre managers the discretion to issue free movie passes to the projectionists. When this inconsistency was raised, counsel for the employer made an attempt to justify the distinction on economic grounds. As pointed out by counsel for the union there is no factual basis for this assertion and it is not an inference we are prepared to make. Therefore, that leaves us with the question why the unionized front-of-house staff are denied the free passes when the projectionists are not. Is it, as counsel for the union suggests, indicative of an anti-union attitude towards the front-of-house staff or, as counsel



for the employer suggests, is the appropriate inference to be made by the Board that if the employer was anti-union they would have denied the passes to all of their unionized employees.

25. As was noted in the *Pop Shoppe* case, the Board must distinguish between conduct that is unlawful and conduct that is unfair. Clearly it is unfair to continue to provide the passes to the projectionists on a discretionary basis and not to the unionized front-of-house staff. But, is the conduct illegal? Was the employer motivated by an intention to penalize this newly unionized group of employees when it refused to continue the issuance of free movie passes, or is it truly and only motivated by the principle that “a deal is a deal” and as the union did not negotiate the continuance of the practice, the front-of-house staff no longer will receive the free passes.

26. The call in this case is a very difficult and close one to make. The circumstances in this case are quite novel. We agree with counsel for the employer that its position with regard to the free passes is a tough one and is consistent with the approach it has taken generally with regard to this bargaining unit. It is very difficult to draw the line between a decision which is motivated by a desire to be firm with the newly unionized employees, and one which is motivated by a desire to, as union counsel put it, show the front-of-house employees what happens when you join a union. If the employer had discontinued the issuance of the passes to all of its unionized staff for legitimate established business reasons, it would not have appeared that the employer was singling out the unionized front-of-house staff. We agree with counsel for the employer, that an employer is entitled to have different terms and conditions of employment for unionized and non-unionized staff and between different bargaining units of organized staff. Clearly the employer is entitled to treat different groupings of staff differently, but in this case the union, as it is entitled to do, is questioning the employer’s motives for singling out and denying the free movie passes to the front-of-house staff.

27. The Board in this case did not hear any evidence. Our factual conclusions are based on an agreed statement of facts. Part of the agreed statement of facts was a letter written by employer counsel to counsel for the union indicating that in accordance with the employer’s interpretation of article 17.01 of the collective agreement, it would no longer provide free movie passes to the newly unionized staff. However, neither in the letter nor anywhere else in the agreed statement of facts is there any explanation of the employer’s *motive* in denying the passes to the front-of-house staff while it continued, in the face of similar collective agreement language, to give individual theatre managers the discretion to issue passes to the projectionists. Counsel for the employer attempted to justify the employer’s conduct on economic reasons but that is not an agreed-to-fact, nor do we have any evidence to support this conclusion. We therefore have no explanation for this differential treatment of the two groups of unionized employees. It is on this point that we feel the case must turn. In the absence of any evidence or agreed upon fact which explains the employer’s motive, we must conclude that the differential treatment of two groups of unionized employees with virtually the same collective agreement language, in the unique circumstances of this case, constitutes a violation of the Act.

28. The conduct of the employer in discontinuing the practice of issuing free movie passes to the newly organized front-of-house employees immediately after the signing of their first collective agreement must have been motivated, albeit in a small part, by a desire to send a message to the employees. While clearly the union made a mistake in not ensuring the continuation of the free passes by enshrining the practice in the collective agreement, we are also of the view that the employer seized the opportunity presented by this omission to send a message to the union and the employees. This motivation, and the subsequent conduct, goes beyond being tough with the union and newly organized employees and passes into the realm of anti-union conduct.

29. Accordingly, we find that the actions of the employer in this case constitute a violation of section 72 of the Act. We hereby direct the employer to cease and desist from its practice of treating the unionized front-of-house staff differently with regard to this issue of free movie passes.

30. For all of the reasons outlined, we are also of the view that the conduct of the employer in denying access to the “run throughs” to the unionized front-of-house staff at the Jackson Square Cinema in Hamilton, was also tainted by an intention to penalize the newly unionized front-of-house employees. Accordingly, we hereby direct the employer to cease and desist from its practice of denying the unionized front-of-house staff access to “run throughs” at the Jackson Square Cinema.

31. Counsel for the union has argued that the employer, in failing to raise its intention to terminate the practice of issuing the free movie passes during the negotiations, has violated section 17 of the Act and has not bargained in good faith. We are not persuaded by this argument. Clearly an employer has the obligation to disclose during bargaining any decisions which have been made which would have a serious impact on the bargaining unit. In this case, there is no evidence before us concerning when the decision to terminate the practice of issuing free movie passes was made. It may have been made after the negotiations concluded. In addition, this kind of change is not of sufficient magnitude to fall within the rubric of “serious impact on the bargaining unit”. This is not the kind of decision dealt with in the *Westinghouse* case (supra) and subsequent decisions (see for example *Union Carbide Canada Limited*, [1992] OLRB Rep. May 645).

32. In the event that the parties have any difficulty implementing this award the Board will remain seized.

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## 2778-96-U United Steelworkers of America, Applicant v. **Greenberg Stores Limited**, Responding Party

**Collective Agreement - Interest Arbitration - Parties - Practice and Procedure - Unfair Labour Practice - Union alleging that employer violating the Act because of its refusal to execute or implement first collective agreement as directed by board of arbitration - Employer asserting that board of arbitration exceeded its jurisdiction and that its award is a nullity - Employer asserting same position in pending judicial review application of arbitration award - Board determining that bargaining unit employees not entitled to notice or to participate in Board proceeding - Board doubting its jurisdiction to sit in review of board of arbitration process - Board, in any event, exercising its discretion not to inquire into complaint because fundamental issue between the parties best dealt with by the Court in judicial review application - Application dismissed**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair.

**APPEARANCES:** *Mark Rowlinson, Robert McKay and Mike Armstrong* for the applicant; *Harry Freedman and Heather Ritchie* for the responding party; *C.J. Abbass* for Susan Osmond.

**DECISION OF THE BOARD;** February 3, 1997

### **I What this case is about**

1. This is a complaint under section 96 of the *Labour Relations Act, 1995*, in which the applicant trade union (the “USWA”) alleges that the responding employer has violated sections 17, 56 and 70 of the Act, essentially because the employer has refused to execute or implement a first collective agreement as directed by a Board of Arbitration constituted to settle such an agreement between the parties.

2. The responding employer does not dispute that it has refused to execute the collective agreement which the Board of Arbitration purported to settle under section 43 of the Act. In essence, the employer's position is that the Board of Arbitration exceeded its jurisdiction and that the Board of Arbitration's award, which includes the alleged first collective agreement, is a nullity. Accordingly, says the employer, there is no collective agreement to execute or in effect between the parties. The employer submits that it has not violated the Act, either as alleged by the USWA, or otherwise.

3. In effect, the USWA seeks to enforce the award of the Board of Arbitration, while in response, the employer seeks to challenge the propriety of the award.

## **II Do employees have a right to participate?**

### **(a) The Board concludes they do not**

4. By decision (without reasons) issued on January 8, 1997, I dismissed a motion by the employer that this proceeding be adjourned so that notice of the proceeding could be given to the bargaining unit employees who are covered by the alleged collective agreement. The employer asserted the employees were entitled to notice, and to participate in the proceeding if they chose to do so (an issue which the employer had raised immediately upon receiving notice of the complaint). Concomitantly, I also dismissed an intervention by a bargaining unit employee who argued, through counsel, that bargaining unit employees were entitled to notice and to participate, or in the alternative, that the Board should exercise its discretion and provide the employees with notice and an opportunity to participate. (The USWA opposed the motion and the intervention.)

### **(b) The Facts**

5. For the purposes of the preliminary issues of notice and status of the bargaining unit employees, the parties agreed to certain facts. It is evident that some other facts were either also agreed or not disputed. Accordingly, the following is the factual basis for the purposes of the preliminary issues of notice and status, and for no collateral or other purpose (other than as indicated infra - see paragraph 32, below):

- (1) The employer operates a retail department store with an unlicensed restaurant in the Town of Marathon, a community with a population of approximately 6,000 located on the north shore of Lake Superior in Ontario.
- (2) On November 14, 1994 the USWA filed an application for certification with respect to employees of the employer (the name of the employer was different from that herein but for the purpose of this proceeding, there was no dispute that the employer entity has been the same throughout).
- (3) By decision dated December 6, 1994, the Board (differently constituted) certified the USWA on an interim basis (pending a decision on the "employee" status of one individual) for all employees of the employer in the Town of Marathon, save and except assistant manager, and persons above the rank of assistant manager, and pending resolution by the Board, excluding as well, office cashier. In a clarity note, the Board noted that the manager and management trainees are above the rank of assistant manager and are therefore excluded from the bargaining unit.
- (4) On January 31, 1995, the USWA gave the employer notice to bargain.
- (5) The employer and the USWA engaged in collective bargaining but were unable to agree to a collective agreement.
- (6) On December 1, 1995 the USWA applied to the Board for a direction that a first collective agreement between the parties be settled by arbitration, under section 43 of the Act.



- (7) On January 8, 1996, the USWA and the employer executed a Memorandum of Settlement in which they consented to a direction by the Board that a first collective agreement between them be settled by arbitration pursuant to section 43 of the Act. They also agreed to meet and have further discussions before proceeding to arbitration, and that in the event that these discussions did not result in the collective agreement that they would proceed to litigate the matter before a Board of Arbitration, which they specified would not be this Board, to be convened pursuant to section 43 of the Act.
- (8) A differently constituted panel of the Board incorporated this Memorandum of Settlement into a decision of the Board and directed that a first collective agreement be settled by arbitration in a decision dated January 11, 1996.
- (9) Both on the day the application for certification was filed and on the day before the Board directed the first collective agreement arbitration as agreed by the USWA and the employer, some bargaining unit employees were not members of the union.
- (10) Some of these bargaining unit employees have not become members of the USWA since the first collective agreement arbitration award was issued, and these employees continue to take the position that they do not wish to become members of the USWA.
- (11) The same employees continue to be employed by the employer without being required to become members of the applicant. These employees wish to continue in their employment without becoming members of the USWA.
- (12) The first collective agreement arbitration hearing was held on May 8, 9 and 28, 1996. The Board of Arbitration also received written submissions, which were completed in mid-June, 1996.
- (13) At the outset of the arbitration hearing on May 8, 1996, Sally Mitchell and Susan Osmond, both of whom are (and were at all material times) employees in the bargaining unit, attended before the Board of Arbitration and indicated that they had a petition signed by a majority of the bargaining unit employees from the employer's store indicating that they did not want to be represented by the USWA, and that there had been a strike vote taken "last year" which the "union didn't win". After hearing the employees' statement, the Board of Arbitration advised them that it didn't care about their petition (which was not filed or otherwise actually presented to the Board of Arbitration) and that they would not be permitted to participate in the first collective agreement arbitration hearing, but that they could remain at the hearing to learn about the labour relations process.
- (14) During the course of the arbitration hearing, it became clear that the USWA was seeking a "union shop" clause in the collective agreement. The Board of Arbitration did not adjourn the hearing or otherwise attempt to notify the two employees who had appeared at the hearing the first day, or any other employees, of this.
- (15) The employer objected to the union shop clause, arguing that it would be contrary to the Canadian Charter of Rights and Freedoms to award it. In its written submissions, the employer argued that:

*Article 2.02 of the Employer's Proposals addresses Union security. It reflects the Employer's firm position that there be an open shop during this first collective agreement. It is a basic principle that union security is negotiable. In Article 8 of its proposals, the Union proposes a closed shop whereby membership in the Union is a condition of employment. The Employer strongly objects to this concept. There is ample protection for employees in the Act. As indicated above, the majority of the employees oppose the Union and it would be unfair in these circumstances to confer a closed shop provision on its employees who are affected by the Collective Agreement. Furthermore, it is the position of the Employer that such a provision would infringe the charter of rights [sic]. ... In a first collective agreement this Board ought not to impose a provision which compels Union membership as a condition of*

employment even if the provision was constitutional which the Employer says it is not.

(emphasis supplied in employer's response)

- (16) The Board of Arbitration issued its decision or award on November 12, 1996, some five months after the last of the written submissions were made by the parties. The award included the purported collective agreement which is the subject of this complaint, and which contains the union shop provision to which the employer objected and continues to object.
- (17) Although dated November 12, 1996, the award was received by the parties on or about November 19 or 20, 1996.
- (18) Upon receipt of the award, by letter dated November 20, 1996, the USWA wrote to the employer regarding the assessment and deduction of union dues from bargaining unit employees.
- (19) The employer responded by letter dated November 26, 1996 as follows:

Receipt of your letter of November 20, 1996 is acknowledged.

In connection with the Award of the Board of Arbitration dated November 12, 1996, the position of the Employer is that the Board of Arbitration lost jurisdiction when it failed to meet the time requirement set out in Section 43 of the *Labour Relations Act, 1995*.

Because of this, the Award has no effect.

Since there is no collective agreement, employees do not have to become and remain Union members and dues need not be deducted from the wages of the employees.

The Board made other jurisdictional errors as well.

- (20) On December 16, 1996, the employer filed an application for judicial review of the November 12, 1996 award of the Board of Arbitration. Notice of this application for judicial review has been served on the USWA but the application has not yet been perfected, and no hearing date has been set.
- (21) In its application for judicial review, the employer seeks "an order quashing and setting aside" the decision of the first collective agreement Board of Arbitration (together with the usual other relief) on the following basis:

## 2. THE GROUNDS FOR THE APPLICATION ARE:

- (a) the Board exceeded its jurisdiction, erred in law and made a patently unreasonable decision by imposing a collective agreement, containing a provision requiring all current employees in the bargaining unit to become members of the respondent, United Steelworkers of America, as a condition of continued employment, thus infringing their freedom of association contrary to section 2(d) of the *Canadian Charter of Rights and Freedoms*;
- (b) the Board exceeded its jurisdiction, erred in law and denied natural justice by refusing to permit certain employees to intervene in the proceeding and make submissions as to whether imposing compulsory union membership on employees of the bargaining unit as a condition of continued employment ought to be ordered;
- (c) the Board exceeded its jurisdiction, erred in law and made a patently unreasonable decision by imposing a collective agreement which amended the matters

agreed to in writing by the parties contrary to section 43(18) of the *Labour Relations Act, 1995*;

- (d) the Board lost jurisdiction when it failed to determine all matters in dispute and release its decision within forty-five days of the commencement of its hearing of the matter;
  - (e) section 2(d) of the *Canadian Charter of Rights and Freedoms*;
  - (f) sections 43(12), 43(18) and 48(18) of the *Labour Relations Act, 1995*;
  - (g) sections 2 and 6 of the *Judicial Review Procedures Act*; and
  - (h) Rules 14, 38 and 68 of the *Rules of Civil Procedure*.
- (22) There has been no application to the Court for a stay of the award. Nor has the employer (or anyone else) sought an expedited hearing of the application for judicial review either under section 6(2) of the Judicial Review Procedure Act or otherwise.
- (23) In the meantime, the employer has not implemented the purported collective agreement awarded by the first collective agreement Board of Arbitration and has conducted itself as though the section 43 “freeze” is in effect.

6. In this complaint, the employer takes the position “that the Board of Arbitration exceeded its jurisdiction in rendering the decision it did and when it did so. The award of the Board [of Arbitration] is therefore a nullity.” (Paragraph 16 of Appendix “A” to the employer’s response). The employer asserts that the award issued by the Board of Arbitration “does not contain a collective agreement which the Board of Arbitration had the power to impose”, and that the employer has bargained in good faith and made every reasonable effort to arrive at a collective agreement with the USWA (paragraph 17 of Appendix “A” to its response). Further, at paragraph 18 of Appendix “A” to its response, the employer pleads that:

- 18. a. The Employer respectfully disagrees with the Union’s legal position. Section 43 of the Act provides that sections 6(8), 6(9), 6(10), 6(12), 6(13), 6(14), 6(17) and 6(18) of the Hospital Labour Disputes Arbitration Act and sections 48(12) and 48(18) of the Labour Relations Act apply to the board of arbitration established under section 43. Sections 10(5), 10(6) and 10(7) of the Hospital Labour Disputes Arbitration Act and section 48(19) of the Labour Relations Act therefore do not apply to the board of arbitration established under section 43. Thus, the propriety of the award issued by a board of arbitration under section 43 is open to challenge where a party seeks to enforce the award.

Finally, the employer submits that the union has not made out a case for the remedies requested, and submits that this complaint should therefore be dismissed.

7. By letter December 18, 1996, the employer gave the appropriate notice to the Attorneys General of Ontario and of Canada that in responding to this complaint it would be taking the position that the Board of Arbitration had exceeded its jurisdiction on a number of grounds, including a violation of the Canadian Charter of Rights and Freedoms, and the employer delivered to the Attorneys General the appropriate notice of the constitutional question (also dated December 18, 1996). The Attorney General of Ontario responded that it did not intend to intervene in the proceedings before the Board. The Ministry of the Attorney General of Canada has sent nothing to the Board and did not appear at the hearing.

8. The USWA has made a “with prejudice” settlement proposal to resolve this complaint. This proposal, which has not been accepted by the employer, has been filed with the Board.



(c) The Arguments

9. On the question of notice and status to participate of bargaining unit employees, the employer referred the Board to sections 5 and 6 of the SPPA, and section 1 of the Board's Rules of Procedure. The employer argued that because the relief the USWA is seeking will require the employer to implement the purported collective agreement which contains the union shop provision which would in turn require bargaining unit employees to join the USWA or face losing their jobs, bargaining unit employees have a direct legal interest in the proceedings before the Board and are entitled to proper notice of the proceedings and to participate in them as a party if they (or any of them) choose to do so. In argument, the employer referred to *Re Hoogendoorn and Greening Metal Products*, (1967) 65 D.L.R. (2d) 641 (Supreme Court of Canada); *Regina Grey Nuns' Hospital Employees' Association v. Labour Relations Board* [1950] 4 D.L.R. 775 (Saskatchewan King's Bench); *Perfection Insulations Limited*, [1980] OLRB Rep. Mar. 352; *Bechtel Canada Ltd.*, [1978] OLRB Rep. May 401; *CUPE v. Canadian Broadcasting Corporation*, (1990) 70 D.L.R. (4th) 175 (Ontario Court of Appeal) and (1992) 91 D.L.R. (4th) 767 (Supreme Court of Canada); and *Peterborough County Board of Education*, [1990] OLRB Rep. Mar. 330.

10. Counsel for Ms. Osmond, who sought to intervene in this proceeding, agreed with and adopted the submissions made by counsel for the employer. He submitted that bargaining unit employees should not have to go to court in order to correct the error(s) which he agreed with the employer have been made, and that if the Board is going to entertain this complaint it must listen to the employees as well as to the two institutional parties. In that respect, counsel argued that it would be important for the Board to hear evidence, which he said he intended to call, on how union membership in Northern Ontario is a social as well as a labour relations matter, and of the economic and other consequences that union membership would have for people who didn't want it. In the alternative, counsel submitted that the employees have a sufficient interest and would add things of sufficient significance to the Board's considerations that the Board should allow them to participate in the exercise of its discretion.

11. The USWA submitted that the employees were not entitled to notice or to participate in this complaint, and that there was no reason for the Board to exercise its discretion to allow them to do so. Counsel argued that this complaint raises an issue of implementation of what the USWA asserts is a valid collective agreement which arises out of an arbitration process which is intended to mirror the collective bargaining process. Counsel submitted that employees are properly given notice and an opportunity to participate when representation rights are in issue, but not in unfair labour practice proceedings, particularly when what is in issue in the proceedings is the implementation of a collective agreement. Counsel appeared to concede that if the USWA was successful in this complaint and then sought to enforce the union shop clause through the grievance arbitration process, employees would be entitled to notice and to participate in the arbitration proceedings, but sought to distinguish between the direct interest which employees who are the object of such grievance arbitration proceedings would have, and the indirect interest they might have in a complaint like this one. Counsel also suggested that employees could raise their concerns in the judicial review proceedings while the operation of the union shop clause was "stayed" as the USWA has suggested as part of its "with prejudice" settlement proposal. Counsel referred the Board to *Kodak Canada Ltd.*, [1977] OLRB Rep. Aug. 517.

(d) Why the Board concluded that employees had no right to and could not participate

12. *Regina Grey Nuns'*, *supra*, involved a legislated union shop provision in the then *Saskatchewan Trade Union Act* in which a Saskatchewan Court quashed an order of the Saskatchewan Labour Relations Board which required an employer to comply with the union shop provision on the basis that that Board acted without jurisdiction when it neglected to follow its own rules and regulations. More specifically, the Court concluded that the Saskatchewan Labour Relations Board is obliged but had

failed to give notice of the unfair labour practice proceedings in which the impugned order was made to the 36 persons who would have lost their jobs as a result of the order. In fact, it appears from the reported decision that there were *three* applications to the Saskatchewan Labour Relations Board involved. At page 778 of the reported decision, the Court wrote that:

On February 22, 1950, the Board received evidence on an application by the applicant herein for an order rescinding an order of the Board dated October 18, 1945, and a further application of the applicant that it constitute an appropriate unit of employees for the purpose of bargaining collectively, and determining that the applicant represents a majority of the employees in the appropriate unit of employees. At the same hearing an application by the Union was heard for an order requiring the Sisters of Charity of the North West Territories (hereafter referred to as the employer) from engaging in unfair labour practices within the meaning of the *Trade Union Act*; and in particular from violating the provisions of s. 25 of the said Act. The evidence adduced in the first two applications was used in the latter. On February 24, 1950, the Board issued an order directing that a vote should be conducted by secret ballot during the last week of April, 1950, among the employees of the "employer" to determine whether the employees wished to be represented for the purpose of bargaining collectively with the "employer" by the applicant or by the "Union".

On the same date an order was issued ordering and requiring the employer to forthwith refrain from engaging in unfair labour practice in contravention of s. 25 of the Act with respect to 36 employees named in the order. The said 36 employees were members of the applicant Association.

13. It therefore appears that two trade unions were engaged in the contest for the right to represent the employees of the employer involved in the *Regina Grey Nuns'*, *supra*, case, but in the course of the representation proceedings it emerged that 36 of the employees who were the subject of the representation contest were not members of the incumbent trade union, and as part of an attempt to defeat the application to displace it, the incumbent trade union sought to have the Saskatchewan Labour Relations Board require the employer to discharge the 36 employees, notwithstanding that the representation issue was to be determined by a vote.

14. In that context, it is easy to understand why the Court decided as it did. It is apparent that the unfair labour practice order relating to the union shop provision would have had a direct impact on the representation proceedings. That being the case, it was clearly necessary to give notice of the unfair labour practice proceedings to the union which was seeking to displace the incumbent union, and to the 36 persons who would be directly affected. Further, and perhaps more importantly for purposes of the standing issue before me in this complaint, it is apparent that the order in which the incumbent union sought and obtained from the Saskatchewan Labour Relations Board in *Regina Grey Nuns'*, *supra*, would have led *directly* to the termination of the 36 employees, and as such was the kind of order which in Ontario today a trade union would seek through the grievance arbitration process. That is, it is analogous to the situation in *Hoogendoorn*, *supra*.

15. In *Hoogendoorn*, *supra*, a collective agreement provided for the deduction and remittance to the union of dues, and required employees to execute an authorization for such a deduction as a condition of employment. Mr. Hoogendoorn refused to authorize the deduction of union dues from his wages, and the employer and the union went to arbitration on the issue of whether the employer was violating the collective agreement by continuing to employ Mr. Hoogendoorn. Mr. Hoogendoorn was not given notice of the arbitration proceedings, and was neither present nor directly represented at the proceedings.

16. Mr. Justice Hall wrote the main opinion for the majority of the Court in *Hoogendoorn*, *supra*. He observed that both the employer and the union understood and agreed that Mr. Hoogendoorn was required to pay union dues and that he refused to do so, that there was therefore no issue between the two collective bargaining parties, and that the purpose of the arbitration proceedings was to get rid of Mr. Hoogendoorn as an employee because of his refusal. Hall, J. therefore agreed with Wells, J.A.

(of the Court of Appeal, the Court being appealed from) to the effect that "... Hoogendoorn under all of the peculiar circumstances ... was entitled to be heard ...." In the result, Hall, J. held that an employee whose status is being affected by an arbitration hearing is entitled to be represented in his own right, as distinct from being represented by a union which is taking a position adverse to his/her interests.

17. In a concurring opinion, Cartwright, C.J.C. emphasized that the decision turned on the "peculiar" facts of the case, and he agreed with Judson J. who said, in dissent (at page 644), that:

The scheme of the *Labour Relations Act*, R.S.O. 1960, c. 202, is to provide for a bargaining agent which is given power to conclude an agreement with an employer, on behalf of the employees of that employer, which agreement becomes binding upon all employees. No ratification or consent by the employees or any of them is required before a lawful agreement can be concluded and the bargaining agent is given specific authority by the Act to make the kind of agreement represented by art. 5.02 in the instant case. No individual employee is entitled as of right to be present during bargaining or at the conclusion of such an agreement. To require that notice and the right to be present be given to each employee on any occasion when a provision in a collective agreement having general application to all employees was being interpreted would be to destroy the principle of the bargaining agent and to vitiate the purpose of the Act.

But, said Cartwright, C.J.C. (at page 642):

The reason that I differ from the result at which [Judson, J.] arrives is that I am unable to regard the arbitration which was held as anything other than an inquiry as to a single question, that is, whether or not the employer was bound to discharge [Hoogendoorn].

18. *Hoogendoorn, supra*, has been interpreted, correctly, I think, as requiring that notice of and an opportunity to participate in arbitration proceedings be given to any employee who may be *directly* affected in his/her employment if the union succeeds (that is, where the interest the union is seeking to have upheld is adverse to the employee's personal interest). Accordingly, not only are employees who the union seeks to have discharged from employment entitled to notice and to participate, so, for example, are employees who are successful in a job posting competition which the union subsequently grieves and asserts that another employee should have been awarded the job instead. Similarly, persons whose employee status is in issue before the Board under section 114(2) of the Act are entitled to notice and to participate if they wish to (*Peterborough County Board of Education, supra*). On the other hand, employees who may only be *indirectly* affected in their employment by an arbitration result are not entitled to notice. For example, where an employee has been hired to replace a discharged employee, that new employee is not entitled to notice or status in an arbitration proceeding in which the union challenges the discharge, even though if the union is successful and the arbitrator reinstates the discharged employee, the employer may have insufficient work to retain the replacement employee and may discharge him/her.

19. The *Hoogendoorn, supra*, analysis formed the basis for the Board's decision in *Per-fec-tion Insulations, supra*.

20. In *Bechtel Canada Ltd., supra*, the Board decided that it would hear a request for reconsideration of a trade union which had not been named as a party to an application for a declaration of an unlawful strike, and which had resulted in a declaration that certain of the respondents had engaged in an lawful strike, and a direction that required those respondents and "their representatives, agents, substitutes or *any person having notice of this direction ...*" (emphasis added) to refrain from doing certain things. It is not clear from the decision whether the trade union seeking reconsideration had any representative or other relationship with the respondents against whom the direction complained of had been made. But since the request for reconsideration raised a question with respect to the appropriateness of including the words "any person having notice of this direction", it appears that it did not. It appears that what concerned the Board in that case were some court decisions which the Board was



concerned brought into question a propriety of the wording it had used. I respectfully suggest that the Board would have no such concerns today, particularly when the words in question do nothing more than direct people not to do what the legislation already prohibits them from doing.

21. The *CUPE v. CBC*, *supra*, case in effect stands for the proposition that a Board of Arbitration cannot make a decision which has the effect of removing work from the members of a union which was not given notice of or allowed to participate in the arbitration proceeding. Although the legal basis for the decision is manifest (and is based on the *Hoogendoorn*, *supra*, principle), I respectfully suggest that the real basis for the decision was the Court's attempt to deal in a practical way with what was clearly a jurisdictional dispute between trade unions which came under the *Canada Labour Code*, a piece of federal legislation which did not contain a specific jurisdictional dispute complaint provision analogous to, for example, section 99 of the *Labour Relations Act*, 1995, and where it was far from clear, the comments of both the Ontario Court of Appeal and the Supreme Court of Canada notwithstanding, that the matter could be dealt with by the Canada Labour Board.

22. The Board's approach to standing in proceedings before it is entirely consistent with the above jurisprudence. A party which seeks to intervene in a proceeding before the Board must demonstrate a real discernible legal interest in the proceedings, or persuade the Board that it is able to provide the Board with assistance which is required to ensure that all of the issues are properly presented, such that it should be granted a kind of *amicus curiae* status. *Amicus curiae* status, which is invoked as a matter of the Board's discretion, has rarely been granted. *Kidd Creek Mines Ltd.*, [1984] OLRB Rep. Mar. 481, provides an example of when it was granted. In that case, United Steelworkers of America, i.e. the applicant herein, was granted *amicus curiae* intervenor status limited to making representations on the legal and policy issues raised by an application for certification by a Local of the United Brotherhood of Electrical Workers for a bargaining unit of maintenance electricians, notwithstanding that the Steelworkers neither represented those employees nor sought to do so. Intervenor status was granted on the basis that the Steelworkers was the dominant trade union in the mining industry and represented many mine maintenance electricians within broader bargaining units. In another case, *New Dominion Stores*, [1986] OLRB Rep. Apr. 519, the United Steelworkers of America was denied such an intervenor status.

23. In order to provide a basis for status, an interest must be direct and substantial. An interest which is merely political, which is anticipatory or speculative, or which is concerned with an indirect economic or commercial effect is not sufficient to entitle a party to intervene in a proceeding. Nor is the fact that the decision in a proceeding may be used or referred to as a precedent in another proceeding (*New Dominion Stores*, *supra*, at page 521; and, more generally, see *Re Schofield and Ministry of Consumer and Commercial Affairs*, [1981] 28 OR (2d) 764 (Ontario Court of Appeal)).

24. To support an intervention on an *amicus curiae* basis, the Board must be persuaded that the party seeking to intervene can provide it with real and substantial input on important issues which the Board is unlikely to receive from the direct parties, and that the participation of such an intervenor will not cause undue delay or prejudice to rights of a direct party.

25. Accordingly, in other than representation proceedings, it is only where an employee's employment status or interest are *directly* in issue that s/he is entitled to notice or to participate in the proceedings before the Board.

26. In this complaint, employees could not raise a representational interest or issue (and there was no suggestion that they could), and no employee's employment can be *directly* affected in the *Hoogendoorn*, *supra*, sense. In the latter respect, the USWA requests the following relief:

- (A) A Declaration that the Employer has breached the Act as particularized in this application; and
- (B) An Order and Declaration that the Employer is bound by the collective agreement ordered by the Board of Arbitration which is effective November 12, 1996; and
- (C) An Order that the Employer compensate all bargaining unit employees for all wages or other benefits of employment which have not been paid to affected bargaining unit employees as a result of the Employer's violations of the *Act* as aforesaid; and
- (D) An Order that the Employer pay the Union all union dues owing to the Union from November 12, 1996; and
- (E) An order that the Board's decision be posted in the workplace for 60 days and that the Board's decision be mailed to all bargaining unit employees at their residence at the expense of the Employer; and
- (F) In light of the egregious nature of the Employer's conduct as particularized in this complaint, and in the context of this complaint and the history of these proceedings as described herein, the Union also requests an Order that the Union be compensated for all expenses incurred in connection with this application, including but not limited to the union's legal fees.
- (G) Such other remedial order as counsel may advise and the Board may consider just and appropriate in the circumstances.

27. The USWA does not request that the Board order the employer to discharge any employee who refuses to become a member of the union. Nor does it directly request that the employer implement and comply with the union shop clause. Nor would any of the relief requested have that direct result if it was granted. Accordingly, the union is not seeking any remedy which would directly affect employees, all of whom are represented by the USWA as their exclusive bargaining agent, *whether or not they are or become members of the union*. The issue between the parties is at a pre-*Hoogendoorn, supra*, stage. In order to enforce the union shop clause which is in dispute, the USWA will either have to persuade the employer to apply it and discharge any bargaining unit employee who refuses to become a member (an unlikely scenario in this case) which might then spawn the sort of litigation by employees which ultimately resulted in the *Hoogendoorn, supra*, decision, or go through grievance arbitration proceedings to enforce the provision, which will put the employees who are the object of the grievance in the same position in which Mr. Hoogendoorn was, and therefore entitle them to notice and standing in those proceedings.

28. What the USWA seeks in this case is enforcement of the Board of Arbitration's award, and not of the first collective agreement which the Board of Arbitration purported to settle between the parties. Accordingly, the bargaining unit employees are not *directly* affected by this application and are not entitled to notice or standing on that basis. Bargaining unit employees are therefore not entitled to notice or standing by operation of law.

29. If one were to conclude otherwise, it would follow that bargaining unit employees would individually be entitled to notice or standing in an application for a direction that a first collective agreement be settled by arbitration in the first place. It would also presumably follow that bargaining unit employees would individually be entitled to a place at the bargaining table, at least with respect to matters pertaining to "their" wage rate, wage progression, benefits, job classification and the myriad of other employment related questions. As the majority and the minority of the Supreme Court of Canada agreed in *Hoogendoorn, supra*, this would be quite inconsistent with a trade union's status under the Act as the exclusive collective bargaining representative of bargaining unit employees in their employment relationship with their employer, a principle which is fundamental to the Act. (Indeed, it would even be

more difficult to sustain a conclusion contrary to the one I have arrived at in matters arising out of first collective agreement proceedings under section 43, since the mandatory ratification vote provisions in section 44 of the Act specifically do not apply to a collective agreement imposed by order of this Board or settled by arbitration (section 44(2)(a)). It would be rather odd to conclude that employees have some sort of individual status in circumstances where they have no collective voice).

30. Nor is there anything in the *Statutory Powers Procedure Act*, the *Labour Relations Act, 1995* or the Board's Rules which entitled bargaining unit employees to notice or standing. The SPPA provides that the parties to a proceeding shall be the persons specified as parties by the statute under which the proceeding arises, or persons entitled by law to be parties (section 5). There is nothing in the *Labour Relations Act, 1995* under which this proceeding is brought, which specifies that bargaining unit employees are parties to a complaint under section 96 of the Act (which this complaint is). Nor is there anything in the Board's Rules which has that effect. Ultimately, the Board's Rules contain a curiously-worded broad definition of "party", but which specifies that "party" does not include a person who the Board decides is not one. Accordingly, bargaining unit employees are not specified parties and are not entitled by law to be parties.

31. Finally, I was not satisfied that the participation of the bargaining unit employees would add anything to the proceedings. Issue has been joined between the USWA and the employer, and the employees essentially seek to support the employer's position. I was not satisfied that the evidence which counsel indicated the employees would seek to call was arguably relevant to the matters in issue, or that it would otherwise add anything to the proceeding. Accordingly, I did not find it appropriate to exercise my discretion to give the employees notice or to allow them to participate notwithstanding that they are not entitled to notice or standing.

### **III The Union's "Motion for Judgement", or what should the Board do?**

32. I then heard the representations of counsel with respect to what was in effect a motion for "summary judgement" by the USWA also on the basis of the aforesaid agreed or undisputed facts (see paragraph 5, above). In effect, the USWA argues that the employer has conceded the breaches of the Act alleged, and that while the employer is entitled to raise the issues it pleads in response to the complaint in the judicial review proceedings, it cannot do so in the complaint before the Board.

#### **(a) Argument**

33. The employer submits that it is entitled to present its defence to the complaint as pleaded. Counsel argues that since the USWA seeks to have the Board declare that the employer is bound by what the union alleges is a collective agreement (together with certain ancillary orders), the employer is entitled to try to persuade the Board that there is no such collective agreement (for the reasons which it seeks to put forward in defence to the complaint).

34. Although the parties disagree on how the Board should proceed and what the result should be in this complaint, neither party suggests that the Board does not have jurisdiction to deal with it, or that it should not do so even if it has the jurisdiction. However, I have concerns in that respect (which I raised with the parties at the hearing).

35. The USWA's position is that the complaint raises the issue of what role the Board has to play in the supervision of a first collective agreement arbitration process, or the result of that process, when it is not itself the Board of Arbitration. The USWA asks that the Board find that there was a collective agreement and says that all the Board needs to look to in that respect is the award of the first contract Board of Arbitration. The USWA submits that what the employer in effect seeks to have the Board do is sit in review of the first collective agreement Board of Arbitration, and that the Board has



no jurisdiction to do this. The union submits that the appropriate place for the employer to advance its position in that respect is in the application for judicial review which it has filed. Counsel submits that upon reviewing the relevant legislative provisions as a whole, and particularly sections 43(10) and (19), 48(18) and 56 of the Act, it should be apparent that the Board has the jurisdiction to deal with this complaint and grant the relief sought.

36. The employer submits that it is not asking the Board to sit in review of the first collective agreement Board of Arbitration. Counsel acknowledges that where a valid award results in a proper first collective agreement, and the employer refuses to acknowledge it, the Board has the jurisdiction to grant a union the appropriate relief. However, argues counsel, before granting any such relief, the Board must examine and consider an employer's reasons for refusing to implement or acknowledge an arbitrated first collective agreement if the employer seeks to defend its conduct. In other words, the employer agrees that the Board is at least a step in the first collective agreement arbitration enforcement process, but argues that the Board must inquire into the matter and consider the defences which are put forward in response to a complaint in that respect. Indeed, argues the employer, the issue is not really one of compliance, but whether there is a collective agreement which must be complied with. The employer submits that this is not a strict liability situation and that a union cannot make a complaint and then seek to gag the employer and deny it the right to make an answer.

(b) Decision

37. As counsel for the USWA said in his reply submissions, the reason this complaint has been made is because there is no "file and enforce through the Courts" provision like section 48(19) in section 43 of the Act. (Nor, I observe, like any of sections 96(6), 99(10), 102, 103(8) or 104(44) of the *Labour Relations Act, 1995*; nor a provision like section 10(7) of the *Hospital Labour Disputes Arbitration Act* which provides that:

(7) If the parties or either of them fail to execute the document prepared by the board within a period of five days from the day of its submission by the board to them, the document shall come into effect as though it had been executed by the parties and the document thereupon constitutes a collective agreement under the *Labour Relations Act*.

Nor does the SPPA apply to proceedings before an arbitrator to which the *Labour Relations Act, 1995* applies (section 3(2)), and section 19 of the SPPA therefore does not apply either).

38. In effect, what the USWA seeks is a "rubber stamp" Board decision which it can file in Court and enforce as an order of the Court pursuant to section 96(6) of the Act. The USWA says that the Board can and must find that there is a collective agreement, but that it is not open to the Board to even entertain a challenge to the existence of the collective agreement, much less make a finding that there is no agreement. The USWA agrees that the issues raised by the employer are properly before the Courts and submits that it shouldn't have to wait until the Court disposes of the employer's application for judicial review before obtaining enforcement of the arbitrated first collective agreement.

39. On the other hand, although the employer says it does not seek to have the Board inquire into, set aside, over-rule or otherwise interfere with the first collective agreement arbitration award, which counsel acknowledged the Board cannot do, the defence the employer seeks to put forward to the complaint is that the Board of Arbitration exceeded its jurisdiction, that the Board of Arbitration's award does not contain a collective agreement which the Board of Arbitration could impose, and that the award of the Board of Arbitration is a nullity (para. 16 and 17 of Appendix "A" to the employer's Response). There is no material difference between the defence the employer seeks to assert in this complaint, and the grounds for its pending application for judicial review.

40. The absence of a “file and enforce” provision in section 43 appears to be a gap in the legislative scheme for first collective agreement arbitration. However, the Board is a statutory tribunal which has only the jurisdiction which the Legislature chooses to give it. It has no inherent jurisdiction, either to fill perceived “gaps” in the Act or other legislation which the Board administers, or otherwise. Further, it is apparent from the scheme of the Act that the Board is not an enforcement body for either its own decisions, or for the decisions of anyone else. In labour relations matters, the decisions of the Board or of Boards of Arbitration to which the Act applies are enforced through the Ontario Court (General) Division. I observe that it would appear that the Court has not only a specific statutory jurisdiction in that respect (in proceedings other than under section 43 of the Act, it appears), but also an inherent supervisory jurisdiction over “inferior” tribunals like the Board. In this complaint, what the USWA is really seeking is the enforcement of the first collective agreement Board of Arbitration’s award.

41. Further, it is quite clear that the Board has no jurisdiction to sit in review of a properly-constituted Board of Arbitration (*Re Windsor Western Hospital and Mordowanec* (1986) 56 OR (2d) 297 (Divisional Court)). The relief sought by the USWA in this complaint includes a declaration that the employer is bound by the arbitrated first collective agreement. Indeed, it is apparent that that is the primary relief the union seeks. In order to grant this relief (as well as the other relief the USWA seeks), the Board would have to be satisfied that there is a valid subsisting collective agreement. To find that there is a valid subsisting collective agreement in this case would seem to require the Board to sit in review of the process by which the collective agreement came to be every bit as much as the employer’s suggestion that there is no valid collective agreement. And in that respect, the employer’s submissions notwithstanding, it is apparent that in defending this complaint, that is also precisely what the employer wants the Board to do; that is, dismiss the complaint on the basis that the Board of Arbitration has not produced a valid collective agreement. Consequently, it is difficult to see how the Board could avoid examining what the first collective agreement Board of Arbitration did in this case.

42. In the result, it is far from clear that the Board has jurisdiction to entertain this particular complaint, given the manner in which the parties have joined issue. I would not have the same doubts if either the employer acknowledged the validity of a collective agreement, but still refused to execute or implement it, or if the employer refused to execute or implement a purported collective agreement which was the product of direct collective bargaining between the parties on the basis that there was no agreement (in that latter respect, see for example, *Sparton of Canada Limited* [1985] OLRB Rep. Sept. 1420).

43. But even if the Board does have jurisdiction, I do not think it appropriate for the Board to inquire into this complaint.

44. The fundamental issue between the parties is the validity of the first collective agreement which the Board of Arbitration purported to settle. This issue is appropriately and best dealt with by the Court in the application for judicial review.

45. Further, I am not satisfied that there would be any particular utility in the Board inquiring into the complaint because there is no dispute between the parties regarding the material facts, and counsel candidly acknowledged that whatever the Board did in this complaint if the matter proceeded, it is virtually certain that the Board’s decision would also be the subject of an application for judicial review where the fundamental issues would be substantially the same as those in the judicial review proceedings which are already underway.

46. Consequently, I am satisfied that it is appropriate for the Board to exercise its discretion to decline to inquire into this complaint, and the complaint is therefore dismissed.

47. In the course of argument, it was suggested that if the Board did not deal with this complaint, the USWA would have no remedy, and the employees would not have the benefit of the collective agreement which has been arbitrated and to which they are entitled. Even though it is not the Board's place to offer advice (and these parties are both already very ably advised, in any event), I respectfully suggest that that is not necessarily the case. First of all, the usual, at least first step in enforcing a collective agreement is the grievance arbitration process, which can be utilized even if the employer refuses to co-operate (see section 49 of the Act). Second, it is not at all clear that a responding party to an application for judicial review cannot seek an expedited hearing in appropriate circumstances, or that it cannot otherwise seek the Court's assistance.

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**3885-95-U Meadowcroft Holdings Inc.,** carrying on business as Execu-Care Nursing Services, Kitchener Meadowcroft Limited Partnership and 5M Management Services Limited, Employer v. London and District Services Workers' Union, Local 220, Union

**Hospital Labour Disputes Arbitration Act - Reference - Employer submitting that "retirement living centre" ought not to be found to be "hospital" on ground that services provided by it to residents would not be significantly disturbed by a strike - Board finding that employer providing accommodation, observation, assessment and supervision of its aged residents and that that is sufficient to be regarded as a "home for the aged" and therefore a "hospital" within the meaning of the *Hospital Labour Disputes Arbitration Act***

**BEFORE:** Christopher Albertyn, Vice-Chair, and Board Members S. C. Laing and P. V. Grasso.

**APPEARANCES:** P. Straszynski and Margaret Carpenter for the employer; Audrey McKay and Brenda Rehkopf for the union.

**DECISION OF THE BOARD;** January 8, 1997

1. This is a referral from the Minister of Labour for the Board to determine the question of whether the *Hospital Labour Disputes Arbitration Act* applies to the parties. The question referred to the Board is the following, is the employer a "hospital" within the meaning of the *Hospital Labour Disputes Arbitration Act*?

2. The applicant is referred to as "the Employer" or "the Employers" or as "Meadowcroft" or as "Execu-Care".

3. The terms "hospital" and "hospital employee" are defined in section 1 of the *Hospital Labour Disputes Arbitration Act* ("HLDAA") as follows:

1(1) "hospital" means any hospital, sanitarium, sanatorium, nursing home or other institution operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness, disease or injury or for the observation, care or treatment of convalescent or chronically ill persons, whether or not it is granted aid out of moneys appropriated by the Legislature and whether or not it is operated for private gain, and includes a home for the aged; ...

1(2) Unless the contrary intention appears, expressions used in this Act have the same meaning as in the *Labour Relations Act*.

1(3) A laundry that is operated exclusively for one or more than one hospital shall be deemed to be a hospital for the purposes of this Act.



1(4) A stationary power plant as defined in the *Operating Engineers Act* that is operated principally for one or more than one hospital shall be deemed to be a hospital for the purposes of this Act.

The position of the union is that the employer is a hospital and that the union's members employed by the employer are hospital employees within the meaning of HLDA.

### **Facts**

4. Meadowcroft is one of many distinctive retirement living centres located throughout Ontario and Florida, U.S.A., owned and operated by the Meadowcroft Management Group, who have been providing geriatric care and accommodations for some 20 years. Meadowcroft provides the following facilities and services: activities, a beauty salon, beauty shop, dining room, a medical practitioner, emergency assistance, entertainment and special events, Execu-Care, garbage collection, housekeeping, laundry, mail delivery and pick-up, maintenance of accommodation, administering of medications, nail care, nurse attendance, religious services, residence council, room service, snacks, coffee and tea, tuck shop, laboratory and pharmacy delivery. The following services are not provided directly by employees of Meadowcroft, but by other parties on a fee for service or contract basis acting on behalf of Meadowcroft: beauty salon/shop, nail care, laboratory and pharmacy delivery and the services of a medical practitioner. Some residents of Meadowcroft are either on portable oxygen or they have oxygen in their rooms. The delivery, set-up and fitting of the initial tanks is done by an outside agency. Should any resident require assistance in using their oxygen, then Meadowcroft employees provide that assistance. On average there are about ten residents using oxygen.

5. There are approximately six managerial or other excluded persons employed by Meadowcroft at the site in respect of which this application is made. There are 17 full-time bargaining unit employees and there are almost double that number employed part-time who are not part of the union's bargaining unit. The following are the job classifications of the employees. The management staff report to the Administrator who manages the facility. The Director of Care, who is not in the bargaining unit, supervises the medical care in the facility.

6. There is one RPN/charge nurse in the bargaining unit and six RPN's/charge nurses who are not in the bargaining unit. They report to the Director of Care, they give medication as required and handle medical emergencies.

7. There is an Activity Director who is not in the bargaining unit, who reports to the Administrator and who oversees the residents' daily activities.

8. There are 5 full-time Execu-Care/bath aides who are in the bargaining unit and 6 part-time Execu-Care bath aides who are not in the bargaining unit. They report to a charge nurse and they assist residents with their personal needs, they answer call bells, change beds as necessary, and serve meals in the dining room.

9. There are 9 housekeepers in the bargaining unit and 5 not in the bargaining unit, being part-time. The housekeepers report to the Administrator, they do the weekly cleaning of the residents' rooms, serve breakfast and lunch on weekdays, oversee the dietary aides at supper and on weekends and they are responsible for the general cleaning of the facility and the laundry.

10. There is a Cook and an Assistant Cook both of whom are not in the bargaining unit. They report to the Administrator and they cook the lunch and dinner for the residents.

11. There are two kitchen aides, one full-time and in the bargaining unit, the other part-time and not in the bargaining unit. They report to the Cook or the Administrator and they assist the Cook with the preparing and serving of meals.

12. There are 16 dietary aides, all of whom are students and outside of the bargaining unit. They report to the Cook, they serve dinner during the week and all three meals on weekends.
13. There is a Maintenance Supervisor and ten part-time maintenance employees, all of whom are not in the bargaining unit. They report to the Administrator. They do heavy cleaning, painting, general plumbing, electrical and heating repairs.
14. The admission criteria for residents include the general requirement that the residents must be able to look after themselves upon admission and must not be nursing home candidates.
15. At the date of the hearing there were 124 residents. Each resident has a room with a bathroom, but no kitchenette. The room has two call bells, one in the main room and one emergency bell in the bathroom. If two people live in one room there are no dividers.
16. Meals are provided to the residents, but family and friends visiting must pay for meals in advance. Residents are assisted with dressing, eating and trays at an extra cost or fee-for-service if they are temporarily ill. Bathing is available to all residents free of charge. Extra personal care is charged for. One resident receives a breakfast tray every morning. Twelve residents have total 24-hour care, 8 residents have morning and afternoon care and 2 residents have just afternoon and miscellaneous care.
17. Of the 124 residents approximately 25 do their own laundry. The laundry of the others is done by employees of Meadowcroft.
18. For scheduled activities, transportation is provided by Meadowcroft to the residents. There is a direct line for taxi service and also a list of people and their numbers for project lifts. There is a monthly educational or social activity schedule and activities are scheduled everyday and sometimes on weekends.
19. All doors of the facility are locked and a security code is used to open doors. Residents and visitors sign in and out. Some residents are restricted at their families request. There are four residents who wander and they are registered under the Waterloo Regional Wandering Patient Registry.
20. There are no restrictions upon visits to the facility.
21. All doors have locks and all staff, other than students, have keys to get into the doors at any time. All residents have keys to their own rooms and to the common areas that are locked. Staff may have access to the locked rooms, but such access is restricted to situations when the bell is rung.
22. Banking services are offered once or twice a month. Certain medical services are provided at the facility. The majority of residents are independent, only 5 or so require extra personal care. The house doctor, who is not an employee of Meadowcroft, comes into the facility once a week for approximately four hours. Approximately 25 residents use outside doctors for their general practitioner needs. Although the residents are not required to use the house doctor, most of them do. Approximately 20 per cent of residents self-administer medication. Of the other treatments administered, there are 2 residents who may require morphine, approximately 5 who require insulin daily, about 5 who require puffers, about 5 who require eye drops, and approximately 3 who may require creams. Employees of Meadowcroft may handle short-term dressings required by residents. An outside agency handles all ongoing or serious packing and dressing. Approximately 20 per cent of residents obtain their medication independently, while another approximately 15 per cent of residents do not require any medication. The remaining 65 per cent of residents receive medication from employees of Meadowcroft. Flu shots are administered once a year. While a medical file is maintained for residents, there is no charting. Infection control procedures have only been necessary on one or two occasions in approximately eight years.

Physical examinations are performed by the house doctor or by outside doctors. Specimens are obtained only when necessary and, on average, one or two specimens may be obtained in the facility in a given week. Oxygen is provided by staff at the facility on a sporadic, as needed basis. If there is any on-going requirement for oxygen, the service is provided by an outside agency. There are only 6 or 7 individuals who require injections, 1 bimonthly and the others on a monthly basis. On average, there may be one suppository or enema required per week. There are approximately 10 or 15 individuals who may require the ordering of diapers, but do not require them all the time. Medical care is available on a 24-hour basis. The medical services are provided by both bargaining unit and non-bargaining unit staff at Meadowcroft, unless the services are provided by a doctor or outside agency.

23. Residents do not ordinarily receive physiotherapy or rehabilitative treatment on the premises although nursing staff or a doctor will arrange for physiotherapy or rehabilitative treatment to occur on the premises on occasion.

24. The nursing staff receive and store the medication and maintain the medication room. They dispense medications and administer the medications to residents who require assistance. They record and document the administration of medication. Residents are generally entitled to dispense the medications themselves in their rooms.

25. The average age of the residents is 83 years. The overwhelming majority of the residents are over 75 years of age. There are five residents with significant physical disabilities. Two residents have one leg amputated, one resident has both legs amputated and two residents are blind. There are six residents with dementia/Alzheimer's and one resident who has schizophrenia. There are 42 residents who are mobility impaired and ten residents require wheelchairs. Thirty-two other residents require walkers.

26. The type of medications used by residents are the following:

Lopressor	Cytotec
Dyazide	Trental
Oral Diabeta	Suppositories
Insulin	Antibiotics
Meloril	Enteric Coated Aspirin
Haldol	Nitro sprays and pills
Lactri-Lube	Ear drops
Timoptic	Rubramin
Topical cortisone creams	

27. The services provided to the residents are the provision of meals; housekeeping (full room cleaning once per week, daily bed making); laundry on a weekly basis; assistance with one bath per week, the cold system; access to nursing on a when needed basis; medication administration as agreed upon with the resident or the resident's family. These services are provided by both full-time (bargaining unit) and part-time staff.

28. Execu-Care provides services to residents of Meadowcroft Place on a contractual fee-for-service basis, which contract can be terminated by the resident on 24 hours notice. Services that may be purchased by a resident vary as to the needs or desires of the resident (and/or their family) and may consist of incontinent care, bathing, meal deliver and/or personal assistance with daily living activities. These services too are provided by both full-time and part-time employees.



29. Execu-Care services are purchased by the hour on an “as needed” or required basis. Residents are not, and cannot be, contractually obliged to use Execu-Care and are free to contract with its competitors at any time.

30. Residents are free to purchase prescribed medication from any pharmacy and, save for limited exceptions, are free to self-administer their own medication.

### Decision

31. Both parties focused in their arguments upon the impact which a strike by the union might have upon the employer’s operations. The employer argued that the services provided to residents would not be significantly disturbed by a union strike because members of management and part-time employees, who are not in the bargaining unit, could maintain the service more than adequately. The union argued the opposite.

32. We are satisfied on the facts, the employer’s submissions are more persuasive than are the union’s on the question of the impact of a strike upon the services provided to the residents. In all likelihood the service to the residents would not be significantly disrupted were the employees in the union’s bargaining unit to have engaged in a strike. But what is the relevance of that conclusion?

33. The employer argues that that conclusion is decisive. It submits that if the employer would be capable of maintaining its service to the residents during the course of a strike by the bargaining unit employees, then the purpose for which the HLDAA was legislated would be achieved without the necessity of a reference to arbitration. In the employer’s argument, reference to arbitration arises only if the delivery of the service to residents would be disrupted by a strike or lock-out. In other words, HLDAA operates to ensure an essential service; if the essential service can be maintained without reference to interest or contract arbitration, then no such reference should be made by the Board.

34. The employer’s argument appears sound from a labour relations perspective. Collective bargaining is a feature of a democratic society. The empowerment of parties to conclude their own agreements and to regulate their relationship without the interference of an agency of the state, like the Board, is a hallmark of a democratic society. Compulsory arbitration entails the interference of the state in free collective bargaining and that interference is customarily accepted as being legitimate only if a greater interest is to be served than the entitlement to free collective bargaining. Where the protection of life and health is put in jeopardy by the free exercise of collective bargaining and of the parties’ respective rights to strike and lock-out, then the law conventionally interferes by requiring the parties to make use of compulsory arbitration as the means of concluding their collective agreement. The rights to life and health trump the entitlement to untrammelled collective bargaining.

35. Were the employer’s argument correct, then HLDAA would have taken the form of the *Crown Employees Collective Bargaining Act* for dealing with this matter. In that statute, the Board can declare essential services so as to ensure that there is no danger to life, health or safety. The Board would consider, when exercising that discretion, what the effect would be of a strike or lock-out on the provision of the particular service under consideration.

36. But that is not the approach adopted in HLDAA. The legislature adopted an “institutional” rather than a “labour relations” approach to the issue. It said, in effect, that whether or not the effect of a strike or lock-out would, in fact, be a danger to the life, health or safety of the residents of an institution, if that institution has the characteristics of a hospital, then it is a hospital and impasse in collective bargaining will not result in industrial action, but in mandatory arbitration instead.

37. The “institutional” approach has some considerable advantages. It avoids the necessity of speculating upon what the effect of a strike by the bargaining unit employees or a lock-out would be upon the services provided by the institution. It avoids considerable litigation over that speculation.

38. There is a further consideration. If we were to endorse a purely “labour relations” approach then certain anomalies would necessarily arise. The definition of a “hospital” would come to depend upon the relative bargaining powers of the parties. So, for example, if the bargaining unit were large such that the health service provided might be disrupted in the event of dispute, then the employer would be a hospital, otherwise not. What if there were two bargaining units, which singly could not cause a threat to the health service, but together could disrupt it? Would the employer be a hospital in these circumstances? If we were to adopt the employer’s argument and focus singly upon each bargaining unit, then in the example, the employer would be deemed not to be a hospital. But if there were to be a strike simultaneously, by the unions representing the two bargaining units, then the employer’s service would cease. In that circumstance, we would reasonably be called upon to declare the employer a hospital. So, on the same set of facts, the employer would not be a hospital in some circumstance, but it would be in others. That anomaly helps to explain why a purely “labour relations” approach to the issue can lead to absurd results, and why the “institutional” approach is to be preferred.

39. Accordingly the capacity of bargaining unit employees, such as those represented by the union, to disrupt the service of the employer to the residents of its establishment although relevant, is not the sole consideration.

40. It is necessary to determine the nature of the institution: who it serves, what it does and how it does it. We now consider those matters.

41. This case was argued upon the basis of whether Meadowcroft is a hospital or not. Little attention was paid in argument to the matter of whether Meadowcroft is a home for the aged although, in our view, that is a significant matter for us to consider in our inquiry. The parties made reference to the test stated in *Canadian Red Cross Society (Ontario Division)*, [1995] OLRB Rep. May 612:

21. As the Society and Brant County correctly point out, given the balancing that must go on, it is not every provider of medical and related services to individuals “... afflicted with or suffering from any physical or mental illness, disease or injury ...”, that qualifies as a “hospital” or a “hospital employee”. This much seems clear from the Board’s decision in *Extendicare, supra*, and from at least certain of the examples cited by the Society and Brant County, to which no reference was made by the union. It is up to the Board, then, to attempt to give meaning to the relatively open-ended statutory language and to place it in purposive and practical context. The Board has attempted to fulfill this role by considering a variety of factors as relevant to the definition of “hospital” and “hospital employee”, including:

- (i) the nature or kind of care provided by the institution in question;
- (ii) the degree or extent of the care;
- (iii) the extent to which the recipients depend upon the care for their continued health or safety;
- (iv) whether the institution is under a statutory obligation to provide the care;
- (v) whether the individuals providing the care are employees of the institution or a third party;
- (vi) the location at which the care is provided;
- (vii) the existence of alternatives to the provision of the care by the employees in question;

- (viii) the historical practice of collective bargaining in the industry.

When all of these factors are considered in this case, we are persuaded that neither the Society Homemaker Services Program nor the Brant County Home Care Program is a “hospital” within the meaning of the HLDAA.

We now consider the various factors.

**The nature or kind of care provided by the Institution:**

42. Meadowcroft provides meals, housekeeping (full room cleaning once per week and daily bed making), laundry each week, assistance with one bath per week, a cold system, access to nursing on an as needed basis and medication administered as agreed upon with the resident or the resident’s family. Execu-Care provides incontinent care, assistance with bathing, tray deliver of meals and personal assistance with various activities. These services are purchased directly by residents on an as needed basis or on a fee-for-service basis. Residents are not contractually obliged to utilize Execu-Care and are free to engage outside agencies to have the personal services provided.

**The degree or extent of the care:**

43. A resident receives care from both part-time and full-time employees and only the full-time employees fall within the bargaining unit in respect of which the union holds bargaining rights. However, the care provided is on a 24-hour basis in respect of certain of the residents and other residents require some degree of care and attention in meeting their personal needs or in administering medication to them.

**The extent to which the residents depend upon the services provided for their continued health or safety:**

44. Residents are not obliged to make use of the services provided by Meadowcroft and Execu-Care. They have available to them the opportunity of engaging the contractual services of other service providers. However, many of the residents make use of the medical pharmaceutical health and other facilities provided by Meadowcroft and Execu-Care. While the services provided by Meadowcroft and Execu-Care can be obtained from other sources in the event of a labour dispute in reality and in practice a majority of the residents make use of the services and facilities provided by Meadowcroft and Execu-Care and not by independent outside agencies.

**Whether the Institution is under a statutory obligation to provide care:**

45. The employers (Meadowcroft and Execu-Care) are not obliged under any statute to provide care.

**Whether the individuals providing the care are employees of the Institution or a third party:**

46. Predominantly the individuals providing care to residents are employees of the employers. While residents may choose at any time to have the care provided by a third party, in general that is not the practice and the bulk of the residents make use of employees of Meadowcroft and Execu-Care for their care and for the services they receive. Of the employees only the full-time employees fall within the union’s bargaining unit.

**The location in which the care is provided:**

47. The care is provided where the residents of Meadowcroft are located.



**The existence of alternatives to the provision of the care by the employees:**

48. Many of the residents require little or no care over and above their basic accommodation and food. Thus, about 20 per cent of the residents self-administer their medication. The majority of the residents however do receive care from the employers and they make use of the services and facilities provided by Meadowcroft and Execu-Care.

49. Residents are free to contract with other service providers besides those offered to them by the employers. Hence the residents are not obliged to make use of the services of the employer, although most do.

**Additional Factors:**

50. As a landlord the employer does not have a right to enter the room of a resident without statutory or contractual authority. The statutory right is restricted to an emergency consent and presence of the tenant when notice of termination of the tenancy has been given. A contractual right of access requires 24 hours written notice. Nonetheless all staff of the employer have keys to the locked rooms and they may enter when the bell of the resident is rung. In addition employees of the employer perform housekeeping duties which involve their entering the rooms of the residents to perform their duties. In practice employees of the employer enter the rooms of the residents in order to perform their duties, to provide care and medication.

**Conclusion**

51. For the purpose of deciding an application for compulsory arbitration under HLDAA, an institution should be looked at primarily by determining what it does and by what services and facilities it offers. The fact that, as in this case, the institution may yet function in the event of a strike or lock-out because of the limited size of the bargaining unit, is a consideration but does not alter the definition of the institution.

52. Meadowcroft provides basic accommodation, meals, companionship, some medical care and social activity for its residents, all of whom are elderly and some of whom are frail or in need of care. Meadowcroft is concerned with the accommodation, observation, assessment and supervision of its aged residents. That is sufficient for it to be regarded as a home for the aged and hence covered by HLDAA. The matter was addressed as follows in *Select Living (1991) Ltd.*, [1994] OLRB Rep. August 1082, at 1086 para. 21:

We have carefully considered the material before us. We view the statute in a manner consistent with that of the decision of the Divisional Court in *Dignicare Incorporated*, cited above, and therefore are persuaded that Barclay House should be covered by the HLDAA. We agree with the court's finding that observation does not have to be of a medical nature to be covered by the definition. From the material before us it is clear that a major component of the service offered by Barclay House is the observation and assessment of its aged residents. This is sufficient for it to be covered by the HLDAA. Further, the legislature did not distinguish between homes for the aged with a relatively well population and those with a very dependent population.

53. In the circumstances, we conclude that the applicant is a home for the aged and hence a "hospital". We find that the employer is a hospital within the meaning of the *Hospital Labour Disputes Arbitration Act*.

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**0164-95-R; 0186-95-R; 0187-95-R; 0251-95-R** The Power Workers' Union, CUPE Local 1000 ("PWU"), Applicant v. **Ontario Hydro**, Responding Party v. The Electrical Power Systems Construction Association (EPSCA), The Electrical Contractors Association of Ontario (ECAO), International Brotherhood of Electrical Workers, Local 1788 (IBEW 1788), The IBEW Construction Council of Ontario (IBEW CCO), International Brotherhood of Electrical Workers, Local 1687 (IBEW 1687), Intervenor; Power Workers' Union, Canadian Union of Public Employees - C.L.C., Local 1000 ("PWU"), Applicant v. Ontario Hydro, Responding Party v. The IBEW Electrical Power Systems Construction Council of Ontario (IBEW EPSCCO), The Electrical Power Systems Construction Association (EPSCA), International Brotherhood of Electrical Workers, Local 1788 (IBEW 1788), Intervenor; Power Workers' Union, Canadian Union of Public Employees - C.L.C., Local 1000 ("PWU"), Applicant v. Ontario Hydro, Responding Party v. International Brotherhood of Electrical Workers, Local 1788 (IBEW 1788), The IBEW Electrical Power Systems Construction Council of Ontario (IBEW EPSCCO), The International Brotherhood of Electrical Workers, Local 1687 (IBEW 1687), The International Brotherhood of Electrical Workers, Local 105 (IBEW 105), The International Brotherhood of Electrical Workers, Local 353 (IBEW 353), The Electrical Power Systems Construction Association (EPSCA), Intervenor; International Brotherhood of Electrical Workers, Local 1687 (IBEW 1687), Applicant v. Ontario Hydro, Responding Party v. Power Workers' Union, CUPE Local 1000 ("PWU"), International Brotherhood of Electrical Workers, Local 1788 (IBEW 1788), The Electrical Power Systems Construction Association (EPSCA), The Electrical Contractors Association of Ontario (ECAO), Intervenor v. Group of Employees, Objectors

**Certification - Construction Industry - Reconsideration - Trade Union - Power Workers' Union (PWU) seeking to displace International Brotherhood of Electrical Workers (IBEW) in several bargaining units - Board concluding that PWU not a construction "trade union" within meaning of section 126 of the Act and therefore not entitled to bring its certification applications - Applications for certification and request for reconsideration dismissed**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair.

**APPEARANCES:** *Chris Paliare, Chris Dassios and John Monger* on behalf of the PWU; *Bob Wright and F. G. Hamilton* on behalf of Ontario Hydro; No one appearing on behalf of the Group of Employees; *Michael Church* on behalf the Building and Construction Trades Department AFL-CIO, Canadian Office; The Ontario Allied Construction Trades Council; *Graeme Aitken* on behalf of the Provincial Building and Construction Trades Council of Ontario and its affiliates; *Allan Minsky* on behalf of the IBEW Electrical Power Systems Construction Council of Ontario (IBEW EPSCCO); The International Brotherhood of Electrical Workers, Local 105 (IBEW 105); The International Brotherhood of Electrical Workers, Local 353 (IBEW 353); The IBEW Construction Council of Ontario (IBEW CCO); The International Brotherhood of Electrical Workers, Local 1687 (IBEW 1687); *Brian J. Mulroney* on behalf of Electrical Power Systems Construction Association (EPSCA); *Scott Thompson* on behalf of the Electrical Contractors Association of Ontario (ECAO); *David McKee* on behalf of the International Brotherhood of Electrical Workers Local 1788 (IBEW 1788).

**DECISION OF THE BOARD;** February 27, 1997

## **I The Applications and the Issues**

1. These are four applications for certification. The three applications by the PWU were made under the “general” certification provisions of the Bill 40 *Labour Relations Act*, since repealed and replaced by the *Labour Relations Act, 1995*. They have not been brought under the construction industry provisions, notwithstanding that they clearly relate to what are indisputably construction industry craft bargaining units.

2. More specifically, Board File No. 0186-95-R is a displacement application in which the PWU seeks to displace the incumbent bargaining agent of the employees of Ontario Hydro who are covered by what is commonly referred to as the “Generation Projects Agreement” between the EPSCA and the IBEW EPSCCO (which is composed of IBEW Locals 105, 115, 120, 303, 353, 402, 530, 586, 773, 804, 894, 1687, 1739 and 1788). The scope clause in this collective agreement is lengthy, but essentially it covers journeymen and apprentice electricians (including foremen and subforemen), electrician welders, and communications electricians. In Board File No. 0187-95-R, the PWU seeks to displace IBEW Local 1788 as the bargaining agent of Ontario Hydro Employees covered by what is often referred to as the “Transmission Agreement” between Ontario Hydro and IBEW Local 1788. Again, the scope clause is lengthy, but in essence this collective agreement covers journeymen and apprentice electricians and linemen (including foremen and subforemen), communications electricians, electrician welders, various groundsmen classifications, and utility men. Notwithstanding that it has an earlier file number, Board File No. 0164-95-R is an application by the PWU “in response to” the IBEW Local 1687 application in Board File No. 0251-95-R, and in the alternative to the PWU’s other two applications.

3. Board File No. 0251-95-R is an application under the construction industry provisions of the Act by IBEW Local 1687 for a standard (for the IBEW) bargaining unit of journeymen and apprentice linemen employed by Ontario Hydro.

4. As I indicated above, during the course of these proceedings, the Bill 40 *Labour Relations Act* under which the applications were brought was repealed by Bill 7 and replaced by the *Labour Relations Act, 1995*. Pursuant to section 3 of Bill 7’s transitional provisions with respect to the *Labour Relations Act, 1995*, the applications are to be decided as if the current Act had been in force at all material times, except that sections 5, 8, 9 and 9.1 of the Bill 40 Act apply, and not sections 7, 8 and 10 of the current Act. The differences between the Bill 40 Act and the current Act are significant in terms of the process by which trade unions in this province are certified by the Board. However, in the circumstances of these applications, these differences do not affect the result or the thrust of the analysis which leads to that result (although there are some minor differences in the details or nuances of that analysis). Accordingly, in this decision, all section references will be to the provisions of the current Act, except that sections 5, 8, 9 and 9.1 of the Bill 40 Act will be referred to instead of sections 7, 8 and 10 of the current Act except where it is necessary to do otherwise.

5. The issue (albeit one which has two parts) at this point of these proceedings is whether the PWU, the applicant in three of the applications, has to be a “trade union” within the meaning of what is now section 126 (formerly section 119) of the Act, and if so, whether it is such a “trade union”. Both generally and in this case, the definition of “trade union” in section 126 of the Act is considered to describe what is colloquially referred to as a “construction trade union”. Accordingly, the issue upon which the parties have joined issue in this case is whether the PWU has to be, and if it does, is it a “construction trade union” within the meaning and for purposes of the Act?

6. If the answer of the first question is “yes” (i.e. it does have to be a section 126 or construction trade union), and the answer to the second question is “no” (i.e. it is not a construction trade union), then the PWU applications herein must be dismissed.



## **II Preliminary Matters**

7. More than a year has passed since I heard the representations of the parties with respect to the following “preliminary” issues:

- (a) whether the PWU must be a “trade union” within the meaning of section 126 of the *Labour Relations Act* in order to bring an application for certification in the construction industry, and more specifically the applications in Board File Nos. 0186-95-R, 0187-95-R and 0164-95-R herein;
- (b) whether the PWU can apply for a province-wide bargaining unit, or whether its applications must be limited to the appropriate geographic area(s);
- (c) whether the PWU can apply for a “craft” bargaining unit like the ones it has applied for in the three applications in which it is the applicant herein.

In that respect, I ruled (by decision dated October 16, 1995) that:

- (a) the PWU must establish that it is a “trade union” within the meaning of section 126 (section 119 at the time) of the *Labour Relations Act* in order to bring an application for certification in the construction industry, and specifically the applications in Board File Nos. 0186-95-R, 0187-95-R and 0164-95-R;
- (b) there is nothing which precludes the PWU from applying for a province-wide bargaining unit, but whether or not such a unit is appropriate in the PWU applications herein remains to be determined having regard to the relevant facts;
- (c) the PWU can apply for a craft unit in the applications for certification herein but whether any of the craft units it has applied for are appropriate remains to be determined having regard to the relevant facts.

8. Subsequently, by correspondence dated December 7 and 19, 1995, the PWU sought reconsideration of my decision that it has to be a “trade union” within the meaning of section 126 of the Act in order to avail itself of the construction industry provisions of the Act or make its applications for certification herein. That request for reconsideration will be dealt with as part of this decision.

9. I then proceeded to hear the parties with respect to whether the PWU is a section 126 or “construction trade union” as I had concluded it must be in order to bring these applications. This required many days of hearing spaced over some nine months. But for the co-operation and good judgement of counsel, the hearing would have taken much longer. Nevertheless there were some 25 days of hearing, during which I heard *viva voce* evidence and received many hundreds of pages of documentary evidence. I also heard the oral representations of the parties, which were supplemented by written “outlines” or submissions. (The PWU’s written submissions alone total 60 single-spaced pages). I also received the written submissions of the Ontario Allied Construction Trades Council, and the Provincial Building and Construction Trades Council of Ontario, which a differently constituted panel of the Board had given intervenor status for the limited purposes of submitted “amicus briefs” (see Board decision dated September 12, 1995).

10. After hearing the representations of the parties in that respect, I made the following evidentiary rulings at the beginning of the hearing (in a decision dated November 17, 1995):

- (a) Although it will not be determinative, the PWU's constitution is relevant to my consideration of the issue.
- (b) Board certificates obtained and collective agreements entered into by the PWU, and the manner in which they were obtained or have been applied are relevant to my considerations.
- (c) It appears to be common ground between the parties that a trade union need not be involved exclusively with construction industry employers or have as members only persons who spent all their time doing construction work in order to be a "trade union" within the meaning of section 126 of the Act, and also that a trade union will not be such a "trade union" merely because it has some members who sometimes perform work which is or looks like construction work. Accordingly, it appears that the parties agree that there is a line which can be drawn between these two extreme positions such that the trade unions on one side of the line are construction trade unions, and the trade unions on the other side are not. They also disagree on which side of the line the PWU falls. Accordingly, it appears that the nature, amount and context of construction work done by members of a trade union will go some way towards determining which side of the line that particular trade union falls on. Consequently, "practice evidence" of what and how much construction work has been performed by PWU members, and the context in which such work was awarded and done, is relevant to my consideration of the status issue.
- (d) With respect to relevant jurisdictional disputes which may have arisen with respect to the awarding of performance of construction work, I find it necessary only to hear when the dispute arose, who the parties to the dispute were, what the work in dispute was, who the work was awarded to initially, and the disposition of that dispute, whether by Board decision or otherwise, if any.
- (e) With respect to the two Accords which have been put before me, the Inn on the Park Accord contains the following provision:

**7.09** The parties may not grieve any difference arising out of the Chestnut Park Accord or this IOP Accord and the resolution of any difference under these two documents may be resolved only using the dispute resolution procedure in the IOP Accord. This IOP Accord may only be raised as a defense or bar to a proceeding before any court, board, arbitrator or other tribunal.

In this case, the onus is on the PWU to establish that it has the right to bring an application for certification in the construction industry; that is, that it is a construction industry trade union. I am satisfied that the PWU should not be permitted to rely on this Accord in this proceeding. I note that the Chestnut Park Accord which has been filed before me does not contain a provision equivalent to Article 7.09 in the Inn on the Park Accord. However, the Accord which was presented to me at the hearing is dated November 15, 1994 and I believe that there is a subsequent version of or addendum to the Chestnut Park Accord. I

direct the Power Workers' Union to either file a copy of that subsequent version of or addendum to the Chestnut Park Accord, or if one has already been filed to direct me to where in the materials it might be found (I note that I have not searched through the boxes of materials filed with the Board in this proceeding to see if a later or other version has been filed). In these circumstances I reserve my decision with respect to whether the PWU can rely on the Chestnut Park Accord.

- (f) Evidence of the practice of the National or Parent CUPE entity is arguably relevant to my considerations. Practice evidence with respect to other CUPE locals is not.
- (g) Practice evidence relating to areas outside of the Province of Ontario is not relevant to my considerations. Consequently practice evidence is to be limited to the Province of Ontario.

11. I also ruled (by decision dated November 22, 1995) that nothing in the aforesaid rulings precluded any party from taking the position, as Mr. Minsky did on behalf of his clients, that whether or not the PWU is a "construction trade union" is not a matter of work practice, trade agreements or jurisdictional disputes, but instead is a matter of representation of bargaining rights as demonstrated by certificates or collective agreements which pertain to the construction industry. Further, I ruled that the manner in which Ontario Hydro has or has been required to apply the *Occupational Health and Safety Act* is irrelevant to the construction trade union issue (for the reasons given in the November 22, 1995 decision).

### **III The Section 126 Interpretation Issue:** **Reasons and the PWU's Request for Reconsideration**

#### **(a) Introduction**

12. The issue which is the subject of this decision is a status issue, not a bargaining unit issue. That is, the question is whether the PWU can bring its three applications at all. It should not be confused with the question of what bargaining unit is appropriate if the PWU is entitled to bring its application. In section 1(1) of the Act, "trade union" is defined as:

"trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national, or international trade union, a certified council of trade unions and a designated or certified employee bargaining agency.

Section 126 of the Act is the first section in the "construction industry" part of the Act. Among other things, section 126 contains a definition of "trade union" as well. It provides that:

**126.** In this section *and in sections 127 to 168,*

• • •

"trade union" means a trade union that according to established trade union practice pertains to the construction industry. ("syndicat")

[emphasis added]

13. The section 126 definition of "trade union" has been in the Act in this form for over 30 years. What has not always been the same are the introductory words of section 126 which now specify



that this definition applies to *all* of the construction industry provisions of the Act. Until the Bill 40 Act came into effect on January 1, 1993, that was not the case. Prior to that, what is now section 126 specified that it applied to only some of the construction industry provisions, which included what is now section 128(1) of the Act but did not include the “province-wide bargaining” provisions, including what is now section 158, the latter being the provision under which all construction industry applications for certifications must be brought (or so the Board has held - see below).

14. The PWU submitted (and continues to do so in its request for reconsideration, in which the only thing that either was not or could not have been argued at the hearing relates to the passage of Bill 7 and the PWU’s argument that the general provisions of the Act continue to apply to construction industry provisions even with the passage of Bill 7) that the Bill 40 amendment to what is now section 126 was not a substantive change, and that there is nothing in either of what is now section 158 or elsewhere in the Act which prohibits a non-section 126 trade union (i.e. a non-construction trade union) from applying and being certified for a bargaining unit of construction employees under the general provisions of the Act. Counsel argued that all certification applications, including applications in the construction industry are governed by the “general” provisions of the Act, and that neither section 158 nor the construction industry provisions as a whole form a “complete code” for construction applications. The PWU submits that to conclude otherwise, as the Board has, is contrary to the general democratic underpinnings of the Act, and the principle of freedom of choice with respect to trade union representation which is enshrined in sections 2 and 5 of the Act. The PWU asserts that applying such an interpretation to section 126 effectively creates a representational monopoly for existing construction trade unions by shutting the door to new unions which may wish to enter the industry, including by voluntary recognition since the section 126 definition of “trade union” applies equally to applications for certification and voluntary recognition agreements. In its request for reconsideration, the PWU argues that:

The violence done to the core purposes of democracy and flexibility by the October 16th decision is most glaringly apparent when one considers the result from the perspective of workers in the ICI sector of the construction industry. Such workers are severely circumscribed in their choice of representative as a result of the restrictions placed upon the designated trade unions. Employees must seek representation from the craft union that has been designated to represent their craft (and cannot be represented by another employee bargaining agency) or, according to the October 16th decision, from a union qualifying under section 158(4) (old section 146(5)) as a union that according to established trade union practice pertains to the construction industry. In practical terms, this will limit the representational choice to the designated employee bargaining agency or CLAC. Few other unions can meet the test set out in 158(4), and those that can, like the PWU, will rarely be able to justify the expense of proving that they are a “trade union that according to established trade union practice pertains to the construction industry” for a typical construction industry bargaining unit. Having to choose between the designated international craft union and the CLAC, with respect, provides workers with a very limited set of options that can in no way be characterized as meaningful “free-designation”. It is also a completely inflexible approach. Workers in the construction industry should be able to choose, through the democratic process, one of a number of effective Canadian unions to represent them, as can all other workers, unless this right has been expressly and unequivocally removed by legislation. It is respectfully submitted that an interpretation of the statute should be rendered that maximizes the ability of workers within the construction industry to freely designate their representative union. Such an interpretation would be in keeping with the Board’s long standing historical approach to this issue.

(I note that in making its “freedom of choice” argument, the PWU did not raise or refer to the *Canadian Charter of Rights and Freedoms*. In any case, the freedom of association/democratic freedoms/freedom of choice argument was rejected for ICI sector employees in *Arlington Crane Service v. Ontario Ministry of Labour* (1988) 56 D.L.R. (4th) 209 (Ontario High Court); and it seems to me that the analysis used therein is equally applicable in these proceedings.)

15. In argument on this issue, the PWU referred to the Board's decisions in *Pickering Welding & Steel Supply*, [1987] OLRB Rep. Apr. 595; *Manacon Construction Ltd.*, [1983] OLRB Rep. July 1104; and *Ben Bruinsma*, [1964] OLRB Rep. Feb. 647.

16. Before turning to the merits of the PWU's position, I observe that in argument and at the hearing, counsel stated that the fundamental issue which has been raised is "whether the wishes of a substantial percentage of employees should be stopped by the Board." With respect, that is not the issue. It will generally be the case that questions of interpretation of legislation like the *Labour Relations Act* will have a policy component to them. The section 126 issue in this case has a policy component to it. However, it is nevertheless primarily a question of statutory interpretation.

(b) Rules of the Interpretation Game

17. The "modern" rule of statutory interpretation can be simply stated as follows:

One must determine the meaning of legislation in its total context, having regard to the purpose of the legislation, the consequences of the proposed interpretation(s), the presumptions and special rules of interpretation, and the admissible extrinsic aids including the relevant legislative history.

(This is my paraphrasing and not a quote, but see *Sullivan, Ruth; Driedger on the Construction of Statutes*, 3rd Edition, Toronto, Butterworths, 1995).

18. Trite though it may be, it bears observing that the interpretation of a legislative provision must be plausible, and consistent with the apparent legislative purpose.

19. The modern presumptions of statutory interpretation, which as their label suggests are no more than rebuttable assumptions which do not necessarily apply in every case, can be summarized as follows:

- (1) *The presumption of knowledge and competence.* That is, the Legislature is presumed to know the existing statutory law and jurisprudence, and how courts and tribunals function.
- (2) *The presumption against tautology.* That is, it is assumed that the Legislature avoids superfluous or meaningless words, and does not *pointlessly* repeat itself. Every word is presumed to be intended and advance the Legislature's purpose. This does not mean that the Legislature cannot repeat itself, it only means that repetition is not to be assumed (see *Hill vs. William (Parklane) Ltd.* [1949] A.C. 530 at 546 (House of Lords)). Pursuant to this presumption, interpretations which render portions of a statute meaningless, pointless or redundant are to be avoided. However, this presumption is easily rebutted by suggesting cogent reasons for the redundant or superfluous words; because for example, of an "abundance of caution" approach. Indeed, as McGlaughlin, J. pointed out (albeit in dissent) in *Chrysler Canada Ltd. v. Canada (Competition Tribunal)* [1992] 2 S.C.R. 394 (Supreme Court of Canada), the fact is that Legislatures often use superfluous words.
- (3) *The presumption of consistent expression.* That is, that within the same statute, the same words have the same meaning and different words have

different meanings. Statutes are not novels, and legislators are assumed to adopt a fixed pattern of expression.

- (4) *The presumption of implied exclusion.* That is, to express one thing is to exclude another, and a failure to mention something indicates an attempt to exclude it. This presumption is rebuttable by alternative explanations, competing considerations, and drafting errors.
- (5) *The presumption of coherence.* That is, internal conflict is to be avoided by presuming that the parts of a statute fit together to form a rational and internally consistent framework which accomplishes the intended goal.

20. It is appropriate that statutes like the *Labour Relations Act, 1995*, like all *Labour Relations Acts* before it, be given a broad and liberal construction consistent with its fundamental purposes: that employees who wish to do so be free to bargain collectively with their employer through the trade union of their choice. However, the Act, like all legislation, must be interpreted according to the words it uses. Remedial legislation like the Act allocates rights and obligations and imposes prohibitions, and within the scheme of the legislation each limits the others. To use emotion laden words such as “democracy”, “freedom of choice”, and “representational monopoly” does little to further the analysis required when a question of statutory interpretation is being considered. All freedoms, democratic or otherwise, have their limits.

#### (c) Legislative History and the Construction Industry

21. In its request for reconsideration, the PWU has suggested that the Board has historically interpreted the Act in a way which has maximized the ability of construction industry employees to choose whichever union they wish to represent them. That is true as far as it goes. In such representation proceedings the Board has approached the issue by asking what is prohibited rather than what is permitted. That is, if it is not prohibited, it is permitted. However, the history of the Act is rather different. Since the Board is always directed by the Act, this is probably more in response to labour relations developments in the field than to the Board’s historical permissive approach. (For a still accurate general description of how the construction industry operates, and of labour relations in the construction industry see Paul Weiler’s *Reconcilable Differences* (1980, The Carswell Company Limited) at pp. 181-195 (see also pp. 195-208 for the experience in British Columbia up to that time). And see also, Rose, Joseph B., *Public Policy, Bargaining Structure and the Construction Industry* (Butterworths, 1980); and *Briecan Construction Limited*, [1989] OLRB Rep. May 417). Nevertheless, the history of the *Labour Relations Act* in that respect is instructive.

22. Prior to 1943, there was nothing resembling the modern Act we are familiar with today. Under the *Industrial Disputes Investigation Act*, (R.S.O. 1937, c. 203, originally enacted in 1907) industrial disputes within exclusive provincial jurisdiction were governed by the *Federal Act*, (R.S.C. 1927, c. 112). Indeed, trade unions were not recognized as legal entities in Ontario. On the contrary, they were considered to be unlawful combinations, and employees had no recognized legal right to bargain collectively with their employers.

23. In 1943, Ontario made one of the first attempts in Canada to construct a compulsory collective bargaining regime. The *Collective Bargaining Act, 1943* is the legislative ancestor of the current Act. It abolished the common-law doctrines of conspiracy and restraint of trade as applied to trade unions. For the first time, trade unions were recognized as legal entities for collective bargaining purposes, and employees were given the right to join and participate in the lawful activities of trade unions. This legislation was administered by the short-lived Ontario Labour Court.



24. The *Collective Bargaining Act* was replaced by the *Labour Relations Board Act, 1944*, which, as the title suggests, created the Labour Relations Board to replace the Ontario Labour Court, although the Board itself was overshadowed by the Federal War Time Labour Relations Board. By virtue of the *Labour Relations Board Act, 1947*, the Board became independent of that federal tribunal. That legislation was in turn superseded by the *Labour Relations Act, 1948* (which also repealed the *Industrial Disputes Investigation Act*). This was very much transitional legislation which was put in place pending the passage of the *Labour Relations Act, 1950* which was already being drafted. Although that legislation included some significant changes, the Board's major function was to deal with representation matters, specifically certification and termination proceedings. Outside of this, the Board's powers were limited and rather ineffectual.

25. In succeeding years, the rights of employees and trade unions, and the Board's powers and ability to deal effectively with labour relations matters, expanded incrementally. For example, under the *Labour Relations Amendment Act, 1956* the Board acquired the power to deal with trade union successorship. The *Labour Relations Amendment Act, 1960* made some important changes to the Board's role and authority by giving the Board the authority to order the reinstatement of employees with or without compensation, which orders were enforceable through the Supreme Court of Ontario, and certain other limited directory powers concerning jurisdictional disputes, and also powers with respect to applications for certification and pre-hearing representation votes. But the Board's primary function continued to be to deal with applications for certification. Up to this point no distinction was made in the Act between construction and non-construction labour relations.

26. Primarily in response to the "Goldenberg Report" in 1962, the *Labour Relations Amendment Act, 1961-62* was passed, and for the first time, the Act included provisions which recognized that construction labour relations were "different". For the first time, a separate part of the Act was devoted to the construction industry. It consisted of only six sections but included a definition of "trade union" in exactly the same words as are found in section 126 today, provided for certification by geographic area rather than by project or location, contained notice to bargain and conciliation provisions, and included a provision relating to when a termination application could be brought.

27. Since then, the evolution of the Act has continued to include changes reflecting an ever increasing awareness of the differences between construction and non-construction labour relations, and the need to address the peculiar needs of the construction industry directly in the Act. Construction industry certification proceedings became more expedited. In 1962, provision was made for a construction division of the Board. In 1970, in an attempt to equalize bargaining power in the construction industry, the Act was amended to establish an accreditation system for employers organizations.

28. In response to the "Franks Report", the Act was amended in 1977 to provide for a comprehensive scheme of province-wide bargaining for the traditional building trades unions in the industrial, commercial and institutional ("ICI") sector of the construction industry. This scheme was designed to encompass the unions and employers which dominated labour relations in the ICI sector of the construction industry. Further amendments, which came into effect on May 1, 1980, extended ICI bargaining rights to the entire province, prohibited selective strikes and lock-outs, and established a ratification procedure for the provincial ICI agreements.

29. In the meantime, by 1975, the Board's general powers had also been expanded to include the power to hear and determine complaints that the Act had been violated, and which enabled the Board to structure comprehensive labour relations remedies in response to breaches of the Act.

30. Since 1980, the Act has been amended many times: in 1983, 1984, 1986, 1990, 1991, 1993 (Bill 40), 1994 (Bill 80, which also relates to problems perceived to be unique to the construction industry), and in November 1995 (Bill 7).

(d) The Interpretation: The Effect of the section 126 definition of “trade union”

31. The first question in this case was whether only section 126 or “construction trade unions” are entitled to apply for certification for a bargaining unit of construction industry employees.

32. The provision of the Act in issue in this case is found in section 126, the first section of the Act under the title “Construction Industry”. This section contains several definitions, which the opening words of section 126 specify apply when the defined words are used in section 127 to 168, which are all of the construction industry provisions of the Act. (See, paragraph 12 above). The issue between the parties is whether this provision, which defines what a “construction trade” is, in conjunction with the other construction industry provisions of the Act, means that only trade unions which are such construction trade unions can make applications for certification in the construction industry.

33. I have concluded that it means precisely that, and upon further reflection I do not see what else it could mean.

34. I begin with the observation that it is not particularly helpful to use the word(s) being defined in a definition. Here, to define “trade union” the term is used twice in the definition itself. Nevertheless, the intended meaning is clear, although perhaps not obvious on first reading.

35. First, it is evident that the definition must mean something. Otherwise it wouldn’t be there.

36. Second, since it provides a definition which applies to every provision in the construction industry part of the Act, it must be defining what a “trade union” is for purposes of those provisions; that is, it defines what a construction industry trade union is, and requires that wherever the term “trade union” appears in sections 127 to 128, the section 126 meaning of the term must be applied to it.

37. Third, it is different from the definition of “trade union” in section 1(1) of the Act (see paragraph 12, above). Accordingly, a section 126 “trade union” must be something other than (just) a section 1(1) “trade union”.

38. Fourth, sections 127 and 152 of the Act provide that:

**127.** Where there is conflict between any provision in sections 128 to 144 and any provision in sections 7 to 63 and 68 to 125, the provisions in sections 128 to 144 prevail.

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**152.** Where there is conflict between any provision in sections 153 to 167 and any provision in sections 7 to 63 and 68 to 144, the provisions in sections 153 to 167 prevail.

This suggests several things. It suggests that there is no conflict between the definition of trade union in section 126 and in the definition of trade union in section 1(1). It also suggests that in some circumstances there may be a conflict between the construction industry provisions and the other “general” provisions of the Act, and that in the event of any such conflict, the construction industry provisions and not the general provisions apply. Where there is no conflict, both apply. Accordingly, the general provisions of the Act apply to the construction industry, but only to the extent that they do not conflict with the construction industry provisions.

39. The general provisions of every modern *Labour Relations Act* prior to the current Act contained a comprehensive scheme which governed the way in which bargaining rights were obtained and lost. Although Bill 7 changed the basis of the certification scheme from a membership document based system to a vote based system, that remains the case under the current Act (and the mandatory vote provisions in the Bill 7 Act are neither applicable nor relevant in these proceedings in any event).

40. The general provisions of the Bill 40 Act which remain operative for the purpose of these applications (and indeed of the current Bill 7 Act), require that all applications for certification be made by a "trade union" as defined in section 1(1), specify when an application for certification can be made, deal with the determination of an appropriate bargaining unit, and specify the way in which a section 1(1) trade union can obtain a certificate from the Board.

41. One would not expect to see certification provisions in the construction industry part of the Act if it was intended that the general provisions apply equally and completely to the construction industry. But there are certification provisions in the construction industry part of the Act, which provisions clearly apply *only* to the construction industry. Section 128 provides, generally, that:

**128.** (1) Where a trade union applies for certification as bargaining agent of the employees of an employer, the Board shall determine the unit of employees that is appropriate for collective bargaining by reference to a geographic area and it shall not confine the unit to a particular project.

(2) In determining whether a trade union to which subsection (1) applies has met the requirements of subsection 8(2), the Board need not have regard to any increase in the number of employees in the bargaining unit after the application was made.

Then, section 158 provides that:

**158.**(1) An application for certification as bargaining agent which relates to the industrial, commercial and institutional sector of the construction industry referred to in the definition of "sector" in section 126 shall be brought by either,

- (a) an employee bargaining agency; or
- (b) one or more affiliated bargaining agents of the employee bargaining agency, on behalf of all affiliated bargaining agents of the employee bargaining agency and the unit of employees shall include all employees who would be bound by a provincial agreement together with all other employees in at least one appropriate geographic area unless bargaining rights for such geographic area have already been acquired under subsection (2) or by voluntary recognition.

(2) Despite subsection 128(1), a trade union represented by an employee bargaining agency may bring an application for certification in relation to a unit of employees employed in all sectors of a geographic area other than the industrial, commercial and institutional sector and the unit shall be deemed to be a unit of employees appropriate for collective bargaining.

(3) A voluntary recognition agreement in so far as it relates to the industrial, commercial and institutional sector of the construction industry shall be between an employer on the one hand and either,

- (a) an employee bargaining agency;
- (b) one or more affiliated bargaining agents represented by an employee bargaining agency; or
- (c) a council of trade unions on behalf of one or more affiliated bargaining agents affiliated with the council of trade unions, on the other hand, and shall be deemed to be on behalf of all the affiliated bargaining agents of the employee bargaining agency and the defined bargaining unit in the agreement shall include those employees who would be bound by a provincial agreement.

(4) Despite subsections (1) and (3), a trade union that is not represented by a designated or certified employee bargaining agency may bring an application for certification or enter into a voluntary recognition agreement on its own behalf.



42. Section 158 is found in the “province-wide bargaining” part of the construction industry part of the Act. But it is quite clear that it applies to much more than the legislated province-wide bargaining structure established for the ICI sector of the construction industry. Subsection 158(1) relates to applications for certification which pertain to the ICI sector. Subsection 158(2) specifically deals with applications for certification which do not pertain to the ICI sector by trade unions which are represented by an employee bargaining agency (and are therefore part of the fabric of province-wide bargaining in the ICI sector). Subsection 158(3) relates to voluntary recognition agreements by trade unions which are part of the province-wide bargaining scheme. Subsection 158(4) relates to applications for certification by trade unions which are not affiliated bargaining agents of a designated employee bargaining agency (as defined in section 151(1) of the Act). Each of subsections 158(1), (2) and (4) speak in terms of the bringing of an application for certification by a “trade union”. Pursuant to the introductory words of section 126, these must be “trade unions” as defined therein.

43. It has been suggested that the Board has concluded that section 158 is a “complete” or “exhaustive” code for construction industry applications for certification. With respect, this is not an entirely correct reading of the Board’s jurisprudence, or of the Act. The proper reading of the Act, and the proposition for which the Board’s jurisprudence on the question stands, is that section 158 *applies* to all construction industry applications for certification, and indeed that it occupies much of the field in that respect. But section 158 is not where one starts or where one stops.

44. One starts with section 5 of the Bill 40 Act (revised and replaced by section 7 of the current Act) which describes when an application for certification can be made. Once a timely application is made, one moves to section 6 (of the Bill 40 Act; which now exists in a modified form in section 9 of the current Act) which, among other things, gives the Board a broad general discretion to determine the appropriate bargaining unit. However, when an application for certification is captured by section 128, that provision operates to direct it to the construction part of the Act, including section 126. And, as the Board observed in *Ellis-Don Limited*, [1988] OLRB Rep. Dec. 1254 (application for reconsideration dismissed [1989] OLRB Rep. Mar. 234), when it comes to applications for certification in the construction industry, this discretion is limited and directed by (what is now) section 158, for as the Board pointed out the *Ellis-Don Limited*, *supra*, decision (at paragraphs 43 to 45):

43. Section [158] covers all applications for certification in the construction industry (see *Clarence H. Graham Construction Ltd.*, [1981] OLRB Rep. Sept. 1195; *Ninco Construction Ltd.*, [1982] OLRB Rep. Nov. 1692; *Manacon Construction Ltd.*, [1983] OLRB Rep. Mar. 407 and July 1104). Under the province-wide bargaining provisions of the Act, some construction industry trade unions are designated to represent certain specific trades or crafts in bargaining in the ICI sector of the construction industry. A trade union represented by a designated employee bargaining agency may, at its option, apply for certification under either section [158(1)] or [2], or enter into voluntary recognition agreements under section [158(3)]. Construction trade unions which are not represented by a designated employee bargaining agency, and are therefore not covered by sections [158(1)-(3)] of the Act, such as the Christian Labour Association of Canada, can apply for certification or enter into voluntary recognition agreements in the construction industry under section [158(4)].

44. The designation orders issued pursuant to section [153](1) of the Act describe the provincial units of employees contemplated by the province-wide collective bargaining scheme established by the Act for the ICI sector of the construction industry in terms of trades and designate, for each such bargaining unit, an employer and employee bargaining agency. In effect, such orders designate the trade(s) which “belongs” to each employee bargaining agency and its affiliated bargaining agents. Employee bargaining agencies, and their affiliated bargaining agents, can only represent, in the province-wide ICI collective bargaining scheme, those employees who are in a trade they have been designated to represent (see *Ninco Construction Ltd.*, *supra*; *Manacon Construction*, *supra*; *Superior Plumbing and Heating Ltd.*, [1986] OLRB Rep. Nov. 1589; *D. E. Witmer Plumbing and Heating Limited*, [1987] OLRB Rep. Oct. 1228). Consequently, in applications for certification under section [158](1), the Board, although not necessarily bound to use the precise words of the designation order, cannot describe an ICI sector bargaining unit in a manner which is inconsistent

with the relevant designation order. To accommodate this designation system, and recognizing that trade union representation in the construction industry has historically been along trade or craft lines, the Board's general practice, in applications under section [158](1), is to describe bargaining units in terms of the relevant trade and using the words of the relevant designation order.

45. Consequently, while section [158] does fetter the Board's discretion under section 6(1), it has preserved and codified the Board's historical willingness (see paragraph 40 and 41 above) to carve out a craft unit from an existing construction industry bargaining unit. Indeed, *the Board has viewed such carve outs as being mandatory in section [158](1) applications* (see for example *Crown Electric*, [1982] OLRB Rep. May 660 *Duron Ottawa Ltd.*, *supra*; *Ben Bruinsma and Sons Limited*, [1984] OLRB Rep. Nov. 1542; *Aero Block and Precast Ltd.*, [1984] OLRB Rep. Sept. 1166). Even in circumstances where a (non-craft) incumbent trade union held bargaining rights for a broader bargaining unit, which included the applicant's trade, in other than the ICI sector, the Board found it appropriate to permit a trade union applying for certification under section [158](1) to carve out its craft from the existing bargaining unit in the "appropriate geographic area" contemplated by that subsection (*D. L. Stephens Contracting Niagara Limited*, [1980] OLRB Rep. Oct. 1384). (And see, *Shearwall Forming (East) Ltd.*, [1989] OLRB Rep. Dec. 1254; *Reitzel Heating & Sheet Metal Ltd.*, [1988] OLRB Rep. Dec. 1310).

I observe that section 128 (formerly section 121) also directs the Board's discretion in that respect in construction industry applications.

45. Once the bargaining unit is determined, one then moves to section 8 (of the Bill 40 Act remember), which provides the parameters for the disposing of all applications for certification, except that in construction industry applications, sections 159 and 160 applies to applications made under section 158.

46. In other words, the construction industry provisions in sections 126 to 168 are superimposed over the general provisions of the Act, and supplant them to the extent that where the construction industry provisions speak to a matter the general provisions do not apply.

47. Indeed, with the proclamation of the Bill 40 Act and continuing under the current Act, after a determination under the general provisions of the Act of whether an application for certification is timely, the construction industry provisions do provide a "complete code" for applications for certification in the construction industry. The general provisions apply to such applications only to the extent that they are incorporated into the construction provisions. That is what sections 127 and 152 mean when read together they provide that sections 128 to 144 and 153 to 167 prevail over sections 7 to 63 and 68 to 125. Indeed, even within the construction provisions themselves, section 152 provides that sections 153 to 167 prevail over sections 126 to 144. The structure of sections 158, 159 and 160, and the way that these provisions refer back to the general provisions in subsections 8(3) to (9) and 10(2) (of the Bill 7 Act; sections 9 and 9.1 of the Bill 40 Act, which are the operative provisions in this case), suggests that if an application which relates to the construction industry is timely, one moves immediately to section 158. Where, as in this case, the section 1(1) trade union making the application (which *all* applicants for certification must be) is not an affiliated bargaining agent, the application can only be made under subsection 158(4). The opening words of this subsection ("Despite subsections (1) and (3) ...") do not take one back to the general provisions of the Act because they refer to a "trade union", which must be a section 126 "trade union" and not just a section 1(1) trade union, that is not represented by an employee bargaining agency; that is, one that is not an affiliated bargaining agent. Subsection 158(4) operates as an exception to the province-wide bargaining scheme and was intended to permit section 1(1) trade unions which were not part of the province-wide bargaining scheme, but which had established themselves as section 126 or construction trade unions to bring applications for certification or enter into voluntary recognition agreements in the construction industry. Not only is this not a way into the construction industry for non-section 126 trade unions, it occupies the field and supplants the

general certification provisions for applications in the construction industry by trade unions which are not participants in the province-wide bargaining scheme.

48. In the result, the legislation treats construction industry applications for certification differently. The legislation recognizes that construction industry labour relations are different from other labour relations, and directs the Board to take heed of these differences when dealing with applications for certification.

49. In *Pickering Welding, supra*, a trade union within the meaning of section 1(1) which it was conceded was not also a section 126 “trade union” made an application for certification with respect to construction employees of a construction industry employer. The Board rejected the employer’s argument that the applicant was not entitled to bring an application for certification with respect to the construction industry because it was not a section 126 or construction trade union as follows:

16. Despite the ingenuity and initial attractiveness of counsel’s argument, we do not accept counsel’s interpretation of the Act. While section 144(1) of the Act stipulates the identity of an applicant that seeks certification in relation to the industrial, commercial and institutional sector of the construction industry, section 144(5) states:

(5) Notwithstanding subsections (1) and (4), a trade union that is not represented by a designated or certified employee bargaining agency may bring an application for certification or enter into a voluntary recognition agreement on its own behalf.

17. The term “trade union” in section 144(5) is not defined by section 117(f) since section 117 opens with the words “In this section and in sections 118 to 136”.

18. Additionally, the term “trade union” is not defined in section 137, the definition section relating to province-wide bargaining. Therefore we are left only with the definition of trade union in section 1(1)(p) of the Act. As we found in paragraph 3 above, the applicant is trade union as defined by that section.

19. Counsel argues that the failure to amend section 117 to include the province-wide bargaining provisions within its ambit was a mere oversight of the Legislature since the province-wide provisions were added to the Act after sections 117 to 136 were part of the Act.

20. The scheme of provincial bargaining in the construction industry contemplates a broadly based bargaining structure in respect of employers whose employees are represented by trade unions that are affiliated bargaining agents of employee bargaining agencies. That scheme is supported by provisions such as section 146 that prohibit collective agreements or other arrangements affecting employees represented by affiliated bargaining agents except for a provincial agreement. Nevertheless, section 144(5) expressly provides that employees may be represented by trade unions other than affiliated bargaining agents and those unions and the employees they represent fall outside the scheme of province-wide bargaining to the extent of the bargaining rights held by those trade unions.

21. The applicant is not a trade union within the meaning of section 117(f). Therefore, it cannot take the benefit of the construction industry provisions of the Act, and in particular, section 119. The number of employees in the bargaining unit and the description of the appropriate bargaining unit must be determined by the Board without regard to section 119, since the applicant is not a trade union as contemplated by section 119.

22. Section 119 does not stipulate that *only* trade unions within the meaning of section 117(f) may apply to represent employees of employers in the construction industry. Section 119 becomes applicable, as the opening words of that section make clear, only where a trade union within the meaning of section 117(f) applies for certification. Unlike section 144, section 119 does not provide a separate vehicle for obtaining certification in respect of construction industry employers and employees. Indeed, section 119(2), which provides:



In determining whether a trade union to which subsection (1) applies has met the requirements of subsection 7(2), the Board need not have regard to any increase in the number of employees in the bargaining unit after the application was made

expressly contemplates that an applicant for certification must still satisfy the requirements of section 7. Certification must still be sought pursuant to sections 5, 6, and 7. The addition of section 144 to the Act does not change the interpretation of section 119 because the definition of trade union used in that section is *not* applicable to the term “trade union” in section 144(5).

23. Nevertheless, the applicant is a trade union within the meaning of the Act and it is not an affiliated bargaining agent as that term is defined by section 137(1)(a). Nothing in section 144 or in any other section of the *Labour Relations Act* prohibits the applicant from seeking certification of construction industry employees of a construction industry employer. Since the applicant is not an affiliated bargaining agent, if it is certified it would not be precluded by section 146 from negotiating and concluding a collective agreement with respondent in respect of the industrial, commercial and institutional sector of the construction industry because the employees it would be representing would *not* be represented by an affiliated bargaining agent. The applicant is not an affiliated bargaining agent. Therefore the limitation on the (employees’ right to select a bargaining agent of their own) choice that is discussed in cases such as *Clarence H. Graham Construction Limited*, [1981] OLRB Rep. Sept. 1195; *Diversified Sheet Metal Limited*, [1981] OLRB Rep. Nov. 1575; *Ninco Construction Limited*, [1982] OLRB Rep. Nov. 1692 and *Manacon Construction*, [1983] OLRB Rep. March 407; application for reconsideration dismissed, [1983] OLRB Rep. July 1104; is simply not applicable here.

24. Neither the applicant nor any of the employees for whom it will hold bargaining rights if certified will be part of the scheme of province-wide bargaining described in the Act. Any collective bargaining in which the applicant engages that might affect employees it represents who are in the construction industry and work in the industrial, commercial and institutional sector would not be subject to section 146 of the Act. Therefore, we are satisfied that the applicant may bring this application for certification under the general provision of the Act, pursuant to sections 5, 6 and 7.

50. In *Pickering Welding*, *supra*, the Board concluded that the applicant could be certified to represent construction industry employees *because* the definition of a construction trade union in what is now section 126 did not apply to prohibit it from doing so; that is, because the section 126 definition of “trade union” did not then apply to what is now section 158. It was this specific conclusion which led the Board to go on to conclude that an all employee unit, so described, was the appropriate one. That is, the Board described the bargaining unit in the manner in which non-craft non-construction bargaining units are generally described, and not in the manner in which construction units were or are typically described (see the subsequent decision in *Pickering Welding & Steel Supply*, [1987] OLRB Rep. June 923). In that respect, *Pickering Welding*, *supra*, was neither a groundbreaking decision, nor a particularly remarkable one. It had already been established that a non-construction trade union could apply to be certified for a bargaining unit of construction employees under the general provisions of the Act (see, for example, *Fielding Construction Co.*, [1970] OLRB Rep. Jan. 1205; *Rexdale Heating Ltd.*, [1974] OLRB Rep. Mar. 115; *A.N. Shaw Restoration Ltd.*, [1981] OLRB Rep. Mar. 241; and the Canadian Construction Workers Union cases cited at paragraph 97 below).

51. It is readily apparent that the Board reverted to the general certification provisions when a section 1(1) trade union which did not meet the requirements of the what is now section 126 definition made an application for certification in the construction industry. However, it is not clear why the Board found it appropriate to do so after what is now section 158 was put into the Act. I respectfully suggest that the *Pickering Welding*, *supra*, analysis more logically led to the conclusion that any section 1(1) trade union could bring an application for certification in the construction industry under subsection 158(4), something which was both consistent with the scheme of the Act and the Board’s jurisprudence prior to the Bill 40 Act. Such a determination would have left all construction industry applications under what is now section 158 but would have maintained a separation between section 126 or construction and non-section 126 or non-construction trade unions since only construction trade unions

could have taken the benefit of provisions, such as what is now section 128, to which section 126 applied. The result in *Pickering Welding, supra*, would have been the same.

52. Perhaps counsel for the employer in the first *Pickering Welding, supra*, was right when he made the legislative oversight argument described in paragraph 19 of that decision (quoted in paragraph 47 herein). In applying the presumption of knowledge and competence, it appears that the change in the Bill 40 Act to the opening words of what is now section 126 was in response to cases like the two *Pickering Welding, supra*, decisions, and was intended to underline the Legislature's intention that only construction trade unions be able to obtain bargaining rights for construction employees of construction employers. In any case, the amendment to the opening words of section 126 has made the *Pickering Welding, supra*, analysis unsustainable. The Board is constrained to acknowledge and give effect to this difference.

53. The presumption against tautology requires that the Board not assume that when it enacted the definition of "trade union" in section 126 the Legislature engaged in an exercise which is merely repetitive or otherwise meaningless. The definition of trade union in section 1(1) is different from the definition of trade union in section 126. To accept the PWU's argument that any trade union; that is, as defined in section 1(1), satisfies the section 126 definition as well would be to give section 126 an interpretation which would make it completely meaningless or redundant. Not only does the presumption against tautology require that such interpretations be avoided, it is readily apparent that in the scheme of the Act only certain section 1(1) trade unions; that is, only trade unions which "according to established trade union practice pertaining to the construction industry" are captured by the section 126 definition.

54. In this case, the presumption of consistent expression cannot apply. Indeed, it would seem that this will invariably be the case when the term being defined is also used in the definition. In this case, not only does the defined term "trade union" in section 1(1) mean something different from the defined term "trade union" in section 126, the first "trade union" in the definition in section 126 does not mean the same thing as the second "trade union" in that definition.

55. Finally, in applying the presumption of coherence, it appears that the Act contemplates a separation between non-construction labour relations and labour relations in the construction industry, and that this separation, is accomplished by limiting access to the construction industry provisions of the Act to construction trade unions (and employers).

56. In the result, I am satisfied that the following paraphrasing of the definition of "trade union" in section 126 demonstrates the interpretation which must be given to it:

"trade union" means a section 1(1) trade union that according to established practice in the construction industry pertains to that industry.

That is, a union which does not fall within the section 126 definition cannot bring an application for certification in the construction industry.

57. Does this circumscribe the freedom of choice which construction industry employees have under the Act? Yes it does. It limits the choice of trade unions available to construction employees who are employed by a construction industry employer, and who wish to be in a construction bargaining unit represented by a trade union for purposes of dealing with their employer in employment related matters. If that is the case, they can only choose as between section 1(1) unions which also satisfy the section 126 definition; that is, section 1(1) unions which are also section 126 or construction trade unions. The question is not whether this is somehow wrong in some broad or philosophical sense. A philosophical debate has its place at the legislative stage, and may have a place at an interpretive stage

where there are two or more equally plausible interpretations of the legislation available. The mere fact that a provision of the Act restricts the freedom of choice which is expressed in sections 2 or 5 of the Act does not mean it is open to the Board to in effect amend the legislation by ignoring the restrictive provision. As I have already indicated, all freedoms are restricted, often in the very legislation which grants them.

58. The striking thing about the evolution of the *Labour Relations Act* in this province is that the fundamental purposes of the legislation have remained the same throughout, and that changes to the legislation have been made primarily to further those fundamental purposes; namely:

- (a) to ensure the right of employees to freely choose whether or not to join a trade union, and if they choose to do so, to bargain collectively with their employer through that trade union; and
- (b) to facilitate the orderly and expeditious resolution of workplace disputes.

This has been accomplished by structuring a legislative scheme which establishes the means by which bargaining rights are obtained or lost, primarily on the basis of some expression of the wishes of employees; by providing a structure for collective bargaining; by requiring that workplace disputes during the currency of a collective agreement be resolved through a grievance arbitration process without recourse to economic sanctions; and by attaching a duty of fair representation to representation rights (for trade unions, trade union organizations, and employers' organizations). The Act creates rights and obligations, and provides for a system of checks and balances for the competing rights of employees, trade unions and employers. Generally, these rights are mutually exclusive such that the rights of one end where the rights of another begin, or the exercise of the rights of one is checked by the existence of the obligation to or the right of another.

59. Further, and most importantly for purposes of these applications, the separation between construction and non-construction labour relations has evolved along with the Act so that today, a significant part of the Act is devoted exclusively to the construction industry. Even in areas covered by the general provisions, the construction industry part of the Act has provisions which supplement or supplant them. This is so for the certification process (already described above), the bar which applies when the Board dismisses an application for certification (compare subsection 10(3) to subsection 160(3)), the structure given to collective bargaining, including notice to bargain and conciliation provisions (section 129 to 131, and 161 to 163), unlawful strikes and lock-outs (sections 144 and 164), the ratification of strikes and collective agreements (the mandatory provisions of sections 44 and 79(3) and (4) do not apply to the construction industry), termination provisions (section 132), accreditation, and access to the Board for the arbitration of grievances under construction collective agreements (section 133) on an expedited basis (something which is not available outside of the construction industry).

60. In the result, the Act began with a representation scheme which did not distinguish between construction and non-construction. Then construction industry provisions were introduced and the separation of non-construction from construction began. The succession of amendments to the Act has progressively increased this separation. At the same time, the ability of construction employees to "freely" choose a trade union has been progressively restricted. When there was no restriction, construction employees could choose from any trade union which demonstrated an interest to represent them. The fact is that few non-construction unions did. Later, construction employees who wanted to have the benefits of the construction industry provisions of the Act, including for example the grievance arbitration provisions in what is now section 133, had their choice restricted to construction trade unions; that is, trade unions which had demonstrated an interest and established a presence in the construction industry. With the introduction of provincial bargaining, the choice construction employees



had was restricted even more, so that construction employees who wish to have the benefit of the province-wide collective bargaining scheme for the ICI sector of the construction industry can only choose between trade unions which are affiliated bargaining agents of a designated employee bargaining agency. And, because of the craft or trade nature of both the construction industry and the traditional “building trades” unions which are active in the construction industry, this “choice” generally comes down to only one, or sometimes two trade unions. Even if construction employees are prepared to consider less traditional building trade unions, their choices are still quite limited (to unions like, for example, the CLAC, the Canadian Construction, Building Maintenance and General Workers Union (NCCL), and a very few others which have established themselves in the field).

61. The PWU submits that if the Board follows this course it will “... effectively create a representational monopoly for existing unions that have established rights by removing the mechanism by which new unions enter the industry. Given the democratic underpinnings of the Act, this cannot be the result of a correct interpretation of the legislation.” (Quote from December 7, 1995 letter from counsel).

62. It would be more correct to call it a representational oligopoly, but the PWU’s hypothesis is clear. It is also probably correct, at least insofar as it suggests that the result is a representational oligopoly in the construction industry. But that is the natural consequence of the development of the industry and the evolution of the Act. It is not the result of the Board’s decision in this case, or of some policy, practice or desire of the Board.

63. General democratic principles are not some sort of trump card which can be played to override the legislation. Nor is representational oligopoly or even monopoly unknown outside of the *Labour Relations Act*. Until recently in Ontario, public sector employees have had little or no choice about even whether they would be represented by a trade union much less which union that would be. In the case of teachers, the *School Board’s and Teachers’ Collective Bargaining Act* (often referred to many who deal with it as “Bill 100”) establishes a representational structure which is mandatory and monopolistic. Not only do Bill 100 teachers (i.e. teachers other than occasional teachers) continue to have no choice of which trade union will represent them, they do not even have the freedom to choose *whether* they will be represented by a trade union. Under the *Labour Relations Act* today, there is only limited truth to the Board’s observation in *Duron Ontario Limited*, [1976] OLRB Rep. Nov. 734 (at paragraph 13) to the effect that no trade union possesses a monopoly on the representation of any bargaining unit of employees, at least insofar as the construction industry is concerned. In that respect, I observe that that decision was made prior to the legislation of province-wide bargaining in the ICI sector. Hence, there was no equivalent to the present section 158, and accordingly the Board determined the appropriate bargaining unit under section 6(1), *but having regard to section 128* (and in any case the real issue in that case was whether a craft union could be certified for other than its craft - which an affiliated bargaining agent would be prohibited from doing in the ICI sector today).

64. But does this mean that the representational choice of construction employees is limited to construction trade unions? Perhaps not entirely, at least for construction employees who are not concerned about access to the specialized construction provisions in the Act. The Board has long considered any employer which uses its own employees to perform construction work to be an “employer” within the meaning of section 126 of the Act; that is, an employer in the construction industry for purposes of an application for certification, even if construction work is not the primary or even a significant part of the employer’s business (see, for example, *Ridsdale Steel Fabricators Inc.*, [1987] OLRB Rep. Apr. 601, and the various School Boards cases). Accordingly, the Board has considered it appropriate to consider an application for certification for construction employees of such employers to be made under section 158; that is, under the construction industry provisions of the Act. Prior to the Bill 40 amendment such applications for certification were *allowed* to be made under the

general or construction provisions of the Act (but see my observations in paragraph 51, above). If they were made by a non-construction trade union (as they rarely were), they were considered under the general provisions (as per *Pickering Welding, supra*). If they were made by a construction trade union, (as they generally were), they were considered under the construction provisions of the Act.

65. In applications under the construction provisions, the bargaining unit has always been made up exclusively of construction employees. Non-construction employees have not been allowed in them. That has not been the case in non-construction applications. For example, it is well-known that many large manufacturing employers employ persons who spend all or a majority of their time performing work which can fairly be considered to be construction work. (For example, automobile manufacturers employ individuals, including electricians, who perform work which is the kind of repair work which would be considered to be construction work, or, less commonly, even new construction). Generally, such unrepresented employees are not excluded from the usual "all employee" bargaining unit under a non-construction or general application. There is nothing in the Bill 40 Act or the current Act which precludes this. Accordingly, construction employees can be represented by a non-construction trade union, although as a practical matter they are generally so outnumbered in a non-construction unit that whether or not they are will turn out to be more the result of choices made by their fellow (non-construction) employees than their own choice (unless they find themselves in the kind of "swing vote" scenario where as a group they are of like mind and a non-construction group is equally divided on the issue of being represented by an applicant non-construction trade union).

66. For all of these reasons, I am fully satisfied that in order to bring its application for certification herein the PWU must establish that it is a trade union within the meaning of section 126 of the Act; that is, a construction trade union. I see no reason to reconsider my original ruling in that respect. The PWU's request for reconsideration is therefor dismissed.

#### **IV Section 126 Applied**

##### **(a) Background and Post-Hearing Developments**

67. Notwithstanding the "official" position taken by IBEW Local 1788 in these proceedings (at least until after the hearing concluded - see below), the PWU applications herein are very much a friendly raid by the PWU of IBEW Local 1788, considered to be the IBEW "Hydro Local". The IBEW Local 1788 position at the hearing was put forward by persons put in place by the parent International Union to replace the executive and officers who the International had in effect deposed. Subsequently, in a local union election held pursuant to a settlement of some of the litigation concerning the recent internal IBEW troubles, a new slate of officers was elected for IBEW Local 1788. This new executive has apparently discharged its former counsel because, by letter dated September 30, 1996, a newly retained counsel wrote to the Board and purported to revoke "all legal positions taken on its behalf that would delay the counting of the ballots", and urging the Board to bring these proceedings to a conclusion by counting the ballots cast in the representation votes and "respecting" the results thereof. In subsequent correspondence, Mr. Minsky indicates his clients' objection to this, and submits that the positions taken by the IBEW Local 1788 at the hearing are binding on the new executive, and that they cannot be revoked. Not surprisingly, the PWU has written in support of the position of the new IBEW Local 1788 executive and counsel. The International has responded by placing the IBEW Local 1788 "under supervision" or in trusteeship. Although this supervision or trusteeship appears to have been exercised only to a limited extent so far, this puts IBEW Local 1788 in essentially the same or potentially the same position (it appears) it was in prior to the recent local union elections. All of this is the subject of a further complaint to the Board.)

68. I see no reason why a party cannot change its position in a matter at any time prior to a decision being made. Not only is this a fairly common occurrence, it is desirable because it can narrow



the issues which require determination, and on occasion can even lead to a settlement during or even after a hearing. However, I need not determine whether that is so in these proceedings, or whether there is some cogent reason why the IBEW Local 1788 cannot change its position in this case. The fact is that IBEW Local 1788 has not been the only party standing in the PWU's way in these applications. All of the other parties, including the responding employer, have been as well. Consequently, the issues remain the same. So does the evidence; and I will not ignore the arguments. Further, the Board has already ruled that the PWU has to be a section 126 trade union in order to be able to bring its applications herein. Consequently, even if all parties agreed, it is not at all clear that the Board could or would dispense with determining the issue, just as the Board cannot, or at least will not, dispense with the determination of whether or not a new entity which applies for certification is a "trade union" within the meaning of section 1(1) of the Act even if all parties agree that it is.

69. Accordingly, none of this changes anything, although it does serve to underline that the raid is friendly insofar as IBEW Local 1788 is concerned (although unfriendly as far as the other parties, particularly the IBEW International, are concerned).

70. I also note that the Board has recently received some 200 letters from individuals who purport to be members of IBEW Local 1788 and "one of 242 people on the voters' list" for the votes which were held in these applications, in which these individuals express the view that "we as workers should have the right to choose the union to be our bargaining agent", and "urging" that the ballots be counted "without delay". It is readily apparent that someone on the PWU's side of this litigation has orchestrated this letter writing campaign in an attempt to influence the Board. All of the letters are in a prepared form which the individual has dated and signed, and all but a very few have been sent to the Board in an envelope bearing a printed address label. All of the letters are addressed to the Chair. Of course, the Chair is not seized with this matter, I am. Accordingly, the decision in these applications must be, and will be, made by me, not by the Chair or anyone else.

71. I will give both the unidentified orchestrator(s) and the individual letter writers the benefit of the doubt and assume that they did not intend to have the Chair try to influence my decision in these matters. Further, I understand the frustration that the employees must be feeling, their desire and that of the parties for a decision, and that any avoidable delay is very undesirable. However, speed is not the only objective. This has been a lengthy proceeding which has raised complex issues of great significance not only to the employees and parties involved, but also to the construction industry as a whole. Like every matter which comes before the Board, these applications deserve a decision which is made after the Board has given due consideration to the evidence and representations of the parties. Surely, none of them would have it any other way. This takes longer in some cases than in others. Unfortunately for all concerned, this is one of those "longer" times.

72. In any event, the letter campaign is quite irrelevant to the Board's consideration of the issues of whether, first, the PWU must be a section 126 trade union in order to bring its applications herein, or second, if so, whether it is such a trade union. That is, whether or not the PWU is entitled to represent the employees who are the subject of its applications is not a matter of their wishes in that respect. It may be that the PWU wishes to represent the employees and that the employees wish the PWU to represent them, but the question is whether or not the PWU can do so. That is what this whole case is really about.

73. In any case, this is, as I have already observed, very much a friendly raid. The PWU's applications have almost certainly been prompted by recent developments in the electrical power systems sector involving the various parties herein. In no particular order, (assuming that an order can be discerned), there has been a continuous evolution in the structure and operations of Ontario Hydro, there has been serious internal in-fighting within the IBEW in which the IBEW Local 1788, with some



support from IBEW Local 353, has been pitted against the International, the IBEW - EPSCCO and the other IBEW Local Unions, and there has been a jurisdictional struggle between the PWU on one hand and the building trades unions, and particularly the IBEW (and even more particularly IBEW Local Union 1788), on the other.

74. It seems that changes at Ontario Hydro have become a feature of the electrical power systems sector, and are almost as inevitable as death and taxes. These changes, together with the downturn in both Ontario Hydro's operations, and in the construction industry in general, have almost certainly contributed to the IBEW's internal problems, and to the jurisdictional struggle between the PWU and the building trades unions, particularly the IBEW.

75. In the recent IBEW Bill 80 case (*International Brotherhood of Electrical Workers*, [1996] OLRB Rep. Feb. 70), IBEW Local 1788 complained that the International, its parent, had violated sections 147 and 149 of the Act by altering its jurisdiction without just cause or notice, and therefore improperly interfered with its autonomy. The change in jurisdiction in issue was in the electrical power systems sector, and specifically under the so-called Generation Projects Agreement and the Transmission Agreement. After a lengthy hearing, the Board dismissed the IBEW Local 1788's complaint. The Board held that the flaws in the process adopted by the International were not fatal, and that the International had just cause to alter the IBEW Local 1788's jurisdiction in the manner it did. Subsequently, and to state that there was a connection with the Bill 80 case is to state the obvious, there was further litigation internal to the IBEW, and specifically, regarding a trusteeship imposed by the International on IBEW Local 1788 and the concomitant removal from office of the executive and officers of the Local who were at the forefront of the Bill 80 complaint against the International. Eventually, this led to an agreement pursuant to which the recent IBEW Local 1788 elections referred to above were held, a slate of candidates sympathetic to the ousted former officers and executive of the Local (at least some of whom have since become employed by the PWU and have been directly involved in the PWU's applications herein) was elected and purported to change the position that the International's installed trustees took in these proceedings, and finally to what is at least further International supervision (and probably a re-imposition of the trusteeship).

76. At the same time, serious work jurisdiction problems had arisen at Ontario Hydro, primarily between the PWU and the various building trade unions who held bargaining rights with respect to Ontario Hydro, but particularly with IBEW Local 1788 - the IBEW "Hydro Local" (at least so far). This resulted in some 200 jurisdictional dispute complaints being filed with the Board, including one, which in the (unfortunate) vernacular popular at the time was referred to as the "mother of all JD's". Ultimately, these led to what are known as "the Chestnut Park Accord (generation projects)" and "the Inn on the Park Accord (lines, stations, switchyards and telecommunications)". (Although I ruled that the PWU could not rely on the Inn on the Park Accord in this proceeding, it is an inextricable part of the background, and is relevant as such.)

77. Both the PWU and the building trades unions perceived that their respective work jurisdictions at Ontario Hydro were being eroded, and that what each was losing the other was getting. Accordingly, both sides fought to protect their jurisdictional "turf". Initially, the essence of the line which was drawn in that respect had maintenance work on the PWU side and construction work on the building trades union's side. Of course, this was a rather broad and blurry line, both because it can be difficult to draw a sharp line between maintenance work and construction work, and because in their more candid moments the PWU conceded, as it had to and as it seeks to trade on in these proceedings, that its members performed construction work, and the building trades unions (perhaps more reluctantly) conceded that their members performed non-construction (i.e. maintenance work). Even then, however, to the extent that any of the work in issue was construction, the PWU claimed it as part of its

work jurisdiction. Similarly, the building trades unions claimed as much work as possible for their members.

78. It seems fair to observe that the breadth of the legislative definition of “construction industry” in section 1(1) of the Act has contributed significantly to the problem of drawing a clear distinction between construction work on one hand and maintenance or non-construction work on the other, a problem which has bedevilled the industry and the Board for many years; and more specifically to the jurisdictional struggle between the PWU and the building trades unions at Ontario Hydro.

79. It appears that the PWU was not doing well in its jurisdictional struggle with the building trades unions, at least not in the proceedings before the Board which had become the primary battlefield (see, for example, *Ontario Hydro*, [1993] OLRB Rep. Nov. 1167) (the “LAN” case) and *Ontario Hydro*, [1994] OLRB Rep. Oct. 1404 (the “Hawkesbury” case)). Although the Board’s decisions in that respect did not explicitly rule in favour of the building trades unions on the basis that the work in dispute was construction work, it appears that the PWU perceived, probably correctly, that the Board considered that where all other factors were more or less equal, construction work should be done by the building trades unions and not by the PWU.

80. Accordingly, the PWU became receptive to the notion of a non-litigation resolution which would preserve as much as possible of what it considered to be the historical distribution of work at Ontario Hydro, such that its members would continue to do the work they had historically done.

81. For their own reasons, the building trades unions were also interested in a non-litigation option. The construction unions undoubtedly also took from the proceedings before the Board that the maintenance work their members had historically performed at Ontario Hydro was in jeopardy. And perhaps they did not share the PWU’s perception of where a litigation solution would lead to.

82. The third part of the puzzle was Ontario Hydro itself, which I suspect was interested in maintaining the operational flexibility it perceived the jurisdictional *status quo* gave it and which the Board proceedings were interfering with, and more generally in stability and labour relations peace.

83. It was against that background that the Chestnut Park and Inn on the Park Accords were negotiated. But as these proceedings demonstrate, these Accords did not end the dispute.

84. IBEW Local 1788 had been at the forefront of both the jurisdictional dispute litigation and the negotiation of the two Accords, but that Local was unhappy with how it was being treated by the IBEW International and the other IBEW Locals. In substance, the disgruntled then officers and executive (who appeared to enjoy the support of many of the Local’s members) felt that IBEW Local 1788’s reward for holding the line against the PWU was a gutting of its jurisdiction to the benefit of the other IBEW Locals. Consequently, when the PWU looked for a means by which to gain a jurisdictional advantage, it found the officers and executive of IBEW Local 1788 ready, willing and apparently able to assist it.

85. Accordingly, the decision was made to try to bring the members of the IBEW Local 1788 under the PWU umbrella. The PWU perceived this to be a way to further protect and perhaps expand its work jurisdiction at Ontario Hydro. The (former) officers and executive of the IBEW Local 1788, saw it as an opportunity to escape the IBEW and maintain what they considered to be the Local’s work jurisdiction, and the jobs which went with it, under a friendlier umbrella.

86. Accordingly, with the active assistance of the then IBEW Local 1788 officers, executives and certain members, the PWU proceeded to woo both the members of IBEW Local 1788 and existing PWU members. It sought to assure them that a “merger” between the PWU and IBEW Local 1788 was

to their mutual benefit. (Earlier, the PWU and IBEW Local 1788 had explored the possibility of an actual merger, which was opposed by the IBEW International, but they quickly abandoned this option in favour of the “raid” option.) In that respect, the PWU printed materials extolling the virtues of “raiding” (the PWU’s word) IBEW Local 1788. The PWU offered its members six reasons for voting (in a membership referendum on the issue) in favour of raiding IBEW Local 1788):

- (1) Because Ontario Hydro could no longer play the PWU and IBEW Local 1788 off against each other.
- (2) Because the international IBEW wouldn’t like it “because in partnership with Local 1788 - *for the first time we will be certified legally in Ontario as a construction union*” [emphasis added]; which would mean more work/jobs for the PWU.
- (3) Because “... the Ontario Labour Relations Board has decided that PWU members have been doing a lot of “construction” which “under our agreements, PWU members aren’t allowed to do ... only Local 1788 members are”, but that if the PWU and IBEW Local 1788 joined forces, *PWU members could (and would) do construction work.* [emphasis added]
- (4) Because “together were stronger politically”.
- (5) To keep Canadian workers money in Canada.
- (6) For job security.

87. The PWU’s materials assert that this would not mean “one big common agreement”, but rather that there would be separate negotiations and separate collective agreements, and that the established work jurisdiction would prevail. (I note that there was a faction within the PWU which was opposed to a merger with or raid of IBEW Local 1788, but is not necessary to delve into that for purposes of this decision.)

88. In another document intended to persuade PWU members of the benefits of bringing IBEW Local 1788 into the fold, counsel for the PWU wrote that:

The legal effect of the proposed raid of the IBEW is similar to that of the recent raids on the IBEW utility locals. That is, the Power Workers’ Union would be obtaining new bargaining rights that it did not have before. The most significant difference between the raids on the utilities and the proposed raid is that *the proposed raid will give the PWU work jurisdiction in the construction sector* that is explicitly set out in the relevant Collective Agreements. *With that should come recognition of the PWU as a construction Union, which will allow the PWU to use the construction section of the **Ontario Labour Relations Act** ...*

[emphasis added]

Interestingly, counsel also wrote that:

- A: The Ontario Labour Relations Board has held that construction work is in the provincial legislative sphere. The combination provisions in the Ontario Labour Relations Act (Section 7) do not apply to construction bargaining units and it is therefore extremely unlikely that anyone could force a combination of bargaining units. Thus, the bargaining rights could be combined only if the PWU wants them combined and if Hydro agrees. If the membership of the PWU doesn’t want the bargaining units to be combined, they won’t be.

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*A successful raid will give us work jurisdiction in the construction sector.*

[emphasis added]



89. In a document dated March 16, 1995, John Murphy, President of the PWU, wrote that one result of a successful raid of IBEW Local 1788 would be that "the PWU would be recognized as a "construction union" ..." which would have direct and indirect benefits to the then current PWU members. The common theme in the PWU's electioneering materials is clear: a successful raid would give the PWU two things it did not think it had; namely, status as a construction trade union, and a protected and increased construction work jurisdiction.

90. Accordingly, it appears that in or about early 1995, either as the two Accords were being negotiated and the Accords were entered into, or immediately thereafter, the PWU negotiated and entered into an agreement dated April 10, 1995 with the (by then removed) officers and executive of IBEW Local 1788 (i.e. Messrs. Sprckett, Mulhall, MacLean, (Ms.) Mitchell, Strong, Gilroy, Wabb, Ives, Bartlett and Tuck - who entered into and executed the agreement "on their own behalf and on behalf of all the members of Construction Workers for a Democratic Union") which was labelled as an agreement "To Safeguard the Rights of Construction Workers Including Electrical Workers Upon Membership in the Power Workers Union".

91. This agreement included the following provisions:

#### PURPOSE

1. The purpose of this agreement is to establish a legally enforceable agreement to ensure that those construction workers who wish to join the Union are provided with certain assurances, guarantees, and safeguards to ensure their proper and appropriate treatment as members of the Union and to provide for structures within the Union which will best serve the interests of construction workers within the Union.

#### OBLIGATIONS OF CWDU

2. The members of the CWDU and the CWDU itself agree to support and to work for the certification of the Union in any application for certification in respect of construction workers during the term of this agreement.

#### MEMBERSHIP

3. Any person who was a member in good standing of Local 1788 on March 1, 1995 (including those persons holding valid Withdrawal Cards on that date) shall be entitled to membership in the Union upon application. Such membership shall not require the payment of any initiation fees or other assessments to the Union, except as required by the Canada Labour Code.

4. All such members shall have all rights and privileges of membership in the Union which, without limiting the generality of the foregoing, shall include the right to be eligible for election to Union office, to vote in Union elections in accordance with the requirements of the Constitution of the Union ("the Constitution"), and to have access to the Union's strike fund in the event of a lawful strike or lockout.

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#### CREATION OF CONSTRUCTION COUNCIL

9. The Union agrees to amend its Constitution to establish a Council of Construction Workers which shall be known as the Power Workers' Construction Council (hereinafter referred to as the "Council"). The members of the Council shall include all persons who were members in good standing of Local 1788 on March 1, 1995 (including persons holding valid Withdrawal Cards on that date), who have applied for membership in the Union, and such other workers who apply for and are accepted in membership in the Union and the Council in accordance with the requirements of the Constitution of the Union and the Operating Rules of the Council.

**Work of the Council - Hiring Hall**

10. There shall be a Construction Council hiring hall in which all members of the Council shall participate and which shall exclusively provide workers to do the following work of the Council:

- (a) all work within the jurisdiction of Local 1788 as of February 22, 1995;
- (b) all work within the jurisdiction of Local 1788 as described in the Chestnut Park Accord dated November 15, 1994 and the Joint Implementation Addendum dated January 30, 1995 and all work awarded to Local 1788 thereunder;
- (c) all work within the jurisdiction of Local 1788 under the Inn on the Park Accord dated February 24, 1995, and all the work awarded to Local 1788 thereunder;
- (d) such other work as agreed upon between the Council and the Union.

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13. As a transitional measure, individuals named by the CWDU shall fill all executive positions on an interim basis, immediately upon certification of a Unit for which Local 1788 previously held bargaining rights, elections shall be held to fill all executive positions. Such elections shall be governed to the extent possible by the procedures for local elections contained in the By-Laws of Local 1788, as of May 1, 1992. Subsequent to the election of the Executive and no later than three months from their election, the Executive shall circulate Operating Rules to the membership for approval at membership meetings by a majority of votes cast. A majority of the interim Executive and elected Executive may pass interim Operating Rules pending the ratification of the Operating Rules by the membership. Operating Rules, whether interim or permanent, shall not conflict with the Constitution, Policies and By-Laws of the Union and shall be subject to approval by the Executive Committee of the Union for purposes of ensuring compliance of the Operating Rules with the Constitution, Policies and By-Laws of the Union.

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**DUTIES AND AUTHORITY OF THE COUNCIL**

16. The Council shall have authority in respect of all matters affecting collective bargaining related to members of the Council. Without limiting the generality of the foregoing, such powers shall include holding bargaining policy meetings, establishing bargaining committees, receiving and considering proposals from its membership, tabling proposals, giving notice to bargain, applying for conciliation, holding strike and ratification votes, authorizing and giving notice of strike, entering into and ratifying collective agreements, making applications for certification, and taking any related legal proceedings at the Labour Relations Boards or elsewhere. The Council may in accordance with its Operating Rules vest any of its powers in the Executive of the Council or on such committees or officers as it deems appropriate.

17. The Council shall have authority in respect of the administration of collective agreements respecting members of the council. Without limiting the generality of the foregoing, such powers shall include operating hiring halls, establishing grievance committees, initiating grievances, processing and settling grievances, referring grievances to arbitration and the conduct of such grievances, and any related legal proceedings whether at Labour Relations Boards or elsewhere. The Council may in accordance with its Operating Rules vest any of its powers in the Executive of the Council or such committees or officers as it deems appropriate.

18. The Council shall have authority in respect of the operation of the Union's hiring halls, the apprenticeship systems and training programs for members of the Council, welfare, pension and other benefit plans administered by the Council, and the operation of all health and safety activities, employment equity activities, pay equity activities, and joint Union management committees concerning members of the Council or officers as it deems appropriate.

21. The Council shall be entitled to affiliate with such other construction organizations as is deemed appropriate.

22. The Union shall not seek to amalgamate, combine, or consolidate any bargaining unit composed of Council members, whether by application to the Labour Relations Board or otherwise, without the consent of the majority of the members of the Council. The Union shall oppose any attempt at consolidation made by an employer unless the majority of the members of the Council voting in accordance with the Operating Rules direct otherwise.

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24. The Council may establish geographic units to facilitate membership participation and such other units as may be appropriate.

25. The Council shall be entitled to send a reasonable number of delegates to national conventions of the Union and to provincial or other conventions of the Union or other affiliated bodies, in accordance with the rules for determination of delegate entitlement of the particular body in question and past practice of the Union.

26. The Council shall be entitled to participate fully as a party at all meetings, including arbitration, involving the Union arising out of the Chestnut Park Accord of November 15, 1994 and the Joint Implementation Addendum dated January 30, 1995 and the Inn on the Park Accord dated February 24, 1995, ("the Accords") in the same manner as Local 1788 would be entitled to, as if the Council were a successor to Local 1788. In any event, the Council will be entitled to a seat on the Steering Committee established pursuant to the Accords in the same manner as Local 1788 would.

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#### **ESTABLISHMENT OF PWU CONSTRUCTION CO-ORDINATOR**

31. The Union shall establish an additional position which shall be designated "PWU Construction Co-ordinator", who shall be elected by the membership of the Council. The PWU Construction Co-ordinator shall exercise his or her duties consistent with the Constitution and By-Laws of the Union and the Operating Rules of the Council. The duties of the PWU Construction Co-ordinator shall include the co-ordination of Council activities with other activities of the Union, directing organizing efforts in the construction industry, lobbying and legislative activities in respect of matters affecting Council members and such other duties and as may be assigned by the Operating Rules. The PWU Construction Co-ordinator shall be entitled to attend meetings of the Executive Board as an Observer and make reports to the Executive Board of the Union with respect to matters relating to the Construction Council and shall be entitled to membership on the Council of Stewards with all the rights and privileges of a Chief Steward. He or she shall participate in Executive Committee meetings as an *ex officio* member with voice and vote in matters relating to the Council.

#### **OBLIGATIONS OF THE UNION**

32. The Union shall enact the attached amendments, set out as Appendix A hereto, to its Constitution to give effect to the provisions of this Agreement and failure to do so shall constitute a breach of this Agreement.

33. The Union shall enact no constitutional amendment uniquely affecting the Construction Council or its membership without approval of the Council as determined under its Operating Rules.

92. In accordance with this agreement, the PWU amended its constitution to include, *for the first time*, a separate construction "division", referred to as the "Power Workers Union Construction Council".

#### **V Is the PWU a Section 126 Trade Union?**

93. Against this background, including the PWU's own description of itself and what it hoped to achieve through its applications herein, I turn to the question of whether the PWU is a trade union



within the meaning of section 126 of the Act, as I have already concluded it must be in order to bring those three applications. Clearly, the PWU is a “trade union” within the meaning of section 1(1) of the Act. Consequently, the question comes to this: is the PWU a trade union which “according to established trade union practice pertains to the construction industry”?

94. Notwithstanding that the definition of “trade union” now in section 126 of the Act has been in the legislation since 1962, there is little jurisprudence on it, and what there is does not offer much in the way of analysis or assistance.

95. In *Ben Bruinsma*, [1964] OLRB Rep. Feb. 647, the Board satisfied itself that the Chatham Construction Workers’ Association, Local 53, affiliated with the CLAC “pertains” to the construction industry in a general way on the basis of its constitution (the specific provisions of which are not reproduced in the decision), but went on to consider the meaning of the phrase “according to established trade union practice”, and concluded that the presence of that phrase in the definition of “trade union” must mean that something more than appropriate constitutional provisions are required. The Board concluded that in order to give meaning to the phrase it is appropriate to look for a history of collective bargaining in the construction industry. In that respect, the Board said (as the PWU points out) that:

“... practice ... has to be established by ascertaining the collective bargaining history of the union, both local and parent. If the practice as ascertained by an examination of the union’s collective agreements is to bargain for workers in the construction industry, then the union has satisfied the requirement ...”.

96. In *Cornelius Vander Stelt*, [1964] OLRB Rep. May 87, the Board found that the CLAC was a section 126 “trade union” on the basis of a constitution which envisaged organizing employees in the construction industry, and four collective agreements (three of which have been entered into by Locals constituted under the CLAC constitution), and, apparently, another construction industry application for certification.

97. It has been said, perhaps rightly, that this suggests a rather low threshold for entry into the section 126 “club”. However, the experience of the Canadian Union of Construction Workers suggests otherwise. In a series of cases in 1969 and 1970, the Board rejected that union’s bid for recognition as a construction trade union. The Board held that an appropriate constitution was not enough, and that a trade union had to demonstrate a history of collective bargaining, or certification as a construction trade union by the Board, which of course couldn’t occur except through inadvertence without a demonstrated collective bargaining history (see *Manor Carpenters*, [1969] OLRB Rep. Jan. 1026; *Zachary De Vuono Limited*, [1969] OLRB Rep. July 493; *Sterling Tile Company*, [1970] OLRB Rep. Feb. 1346; *B. Moscone Tile Company*, [1970] OLRB Rep. Apr. 44; *Perfect Tile Co.*, [1970] OLRB Rep. Apr. 47; *Polmar Tile Company*, [1970] OLRB Rep. Apr. 50; *Speedy Tile & Carpet Contractors*, [1970] OLRB Rep. Apr. 52; *E. Del Medico Limited*, [1970] OLRB Rep. June 383).

98. The Board concluded that the Canadian Union of Construction Workers was not a section 126 trade union and that the applications were therefore not applications within the meaning of what is now section 128, because it had no construction industry collective bargaining history. However, it is not at all apparent that the Board attached any particular significance to the distinction it drew between construction and non-construction applications, since it went on to consider the applications under the “general” (or non-construction) provisions of the Act of the day, but described the bargaining units which the Board considered to be appropriate in construction terms; namely, by specific trade(s) in a construction geographic area. Further, in at least one application (*Polmar Tile*, *supra*), the Board also used the construction date of application test rather than the non-construction test to determine the trade union’s right to be certified. It appears that the Board was led to this incongruous result because of a

concern that the usual “all employee” type of non-construction bargaining unit would lead to jurisdictional disputes. In other words, notwithstanding that the Board found the Canadian Union of Construction Workers was not a construction trade union as defined in the Act, it treated it as one for all practical purposes. However, it did so because of concerns which the Board has long since decided are not relevant to its considerations in applications for certification (see, for example, *Semple-Gooder Roofing Ltd.*, [1983] OLRB Rep. Nov. 1908).

99. Further, it appears that these pre-Bill 40 Act cases are among the precursors of *Pickering Welding*, *supra*, in the sense that they permitted non-construction trade unions to be certified to represent construction employees under the general provisions, something which cannot happen today for the reasons given above.

100. What is interesting, is that none of these decisions, or in any other Board decision of which I am aware, did the Board consider anything other than the trade union’s constitution and whether it (or its parent union) had any collective bargaining history in the construction industry. More specifically, the Board did not consider whether a trade union could establish construction trade union status on the basis either that the trade union counted among its members employees who had regularly performed a substantial amount of construction work, or on the basis that it had a collective bargaining history with an employer or employers who are construction employers within the meaning of section 126. The first proposition has been the fundamental basis for the PWU’s assertion that if it has to be it is in fact a construction trade union. The second, is a proposition which it appears the PWU raises for the first time in its reply submissions.

101. I will deal with the PWU’s first and main proposition first. Both prior to and while preparing this decision, I carefully reviewed the enormous amount of evidence the parties presented concerning the work which PWU members have done and continue to do at Ontario Hydro. In the context of these applications, it would be a truly daunting task to try to determine what work PWU members have performed can properly be considered to be construction work, or to try to distinguish between construction work and maintenance work, a question which has long bedevilled the Board, and an issue which arises because of the separation between construction and non-construction collective bargaining under the Act, as opposed to what the Board is well aware happens in practice (and is partly the result of a definition of “construction industry” which is less than helpful, and an imperfect match between the legislative scheme and real life). (In this case, the differences between the parties with respect to what is construction and what is not construction work range from the ridiculous to the sublime. To select but two examples of the former, it was suggested that if a burned-out light bulb is replaced by one of a higher wattage or which is rated as having a longer useful length, the replacement of the bulb is construction work, but if a bulb is replaced by an identical or a “lesser” bulb, it is maintenance work; or when insulation or cladding is removed to permit routine inspection of a pipe or valve, the activity is construction work if new insulation or cladding is put onto the pipe or valve after the inspection, but it is maintenance work if the same insulation or cladding is replaced.).

102. Fortunately, I find it neither necessary nor appropriate to attempt such an exercise, or even to review the mountain of evidence which is before the Board in that respect. For purposes of this decision, I accept the PWU’s assertion that its members include Ontario Hydro employees who have regularly performed a substantial amount of construction work. I do not accept the PWU’s argument (which in fairness it did not seriously pursue) that any of its collective agreements with the various public utilities or hydro electric commissions in Ontario support its assertion that it is a section 126 trade union. At best, these collective agreements are very much like the PWU’s agreement with Ontario Hydro, and add nothing to the analysis or to the result in these applications.

103. On any objective view of the evidence, it is clear that Ontario Hydro is, and always has been, both an operating company and a construction company. It not only generates and distributes electrical power, it also constructs various kinds of generating plants, and also the electrical transmission and distribution system. It is also clear that through its several incarnations, the PWU has represented Ontario Hydro employees who have performed construction work. Many PWU bargaining unit employees of Ontario Hydro have not performed any construction work. Some have performed some construction work. Some have spent the majority or even substantially all of their time performing construction work, sometimes side by side with or in composite crews with members of the building trades unions, particularly the IBEW Local 1788, doing the same or substantially the same work. In the transmission system, PWU members have done virtually all of the construction of under 50 Kv transmission lines. Indeed, IBEW Local 1788's Transmission Agreement has come to exclude under 50 Kv transmission line construction work. PWU members have also performed a significant amount of over 50 Kv transmission line construction. They have performed construction work in or on transmission stations, and in the apparently never ending construction activities in generation plants, particularly the nuclear power generating facilities, after these began to operate. The details of all this are not important. Suffice it to say that Ontario Hydro employees in the bargaining unit represented by the PWU or its antecedents have regularly and continuously performed a substantial amount of construction work, albeit in amounts which have fluctuated over the years.

104. The PWU asserts that this is sufficient for it to meet the "according to established trade union practice pertains to the construction industry" requirement in section 126. That is, that because of the construction work which its members have done over the years, it is a construction trade union, and as such, is entitled to bring its three applications herein. With respect, I do not agree.

105. Whether one uses the Oxford English dictionary or everyday usage as a reference, "pertains" in this context means: the habitual doing or caring on of something; usual, customary; a habitual way of doing things. Similarly, "pertains to" means: to belong or be connected to. I am not satisfied that the PWU's practice of representing employees of Ontario Hydro accords with the established trade union practice in the construction industry. More importantly, the PWU cannot demonstrate the requisite practice of representing employees in the construction industry which would bring it within the section 126 definition.

106. I reject the notion that "pertains to" must or should be given a broad interpretation. The PWU had to assert that proposition for purposes of its argument. However, the analysis I have already engaged in above suggests the contrary. That is, that the entire definition, and specifically the words "pertains to" should be given a restrictive interpretation in order to accomplish the separation in the Act between construction and non-construction. The very meaning of "pertains to" suggests a more restrictive definition which would limit the class of trade unions which will satisfy the definition; that is, which are construction trade unions.

107. Further, a restrictive approach is also consistent with a not dissimilar provision: that is, the craft unit provision in what is now section 9(3) of the Act which provides that:

9. (3) Any group of employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or crafts shall be deemed by the Board to be a unit appropriate for collective bargaining if the application is made by a trade union *pertaining to* the skills or craft, and the Board may include in the unit persons who *according to established trade union practice* are commonly associated in their work and bargaining with the group, but the Board shall not be required to apply



this subsection where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made.

[emphasis added]

108. The Board has given this venerable provision (which has been in the Act in substantially the same form since 1950) a restrictive definition. The current provision is the same today as it was in 1960, and the essential operative words have been substantially the same throughout its history. A trade union which seeks the benefit of section 9(3) has always been required to establish three things:

- (1) that the employees it seeks to represent exercise technical skills or are members of a craft and are thereby distinguishable from other employees;
- (2) that these employees continuously bargain separately through a trade union *that according to established trade practice* pertains to such skills or craft; and
- (3) that it (the applicant trade union) *pertains* to such skills or craft.

109. In interpreting this provision (section 6(2) of the Act in effect at the time), the Board in *Firestone Tire & Rubber Company of Canada Limited*, [1963] OLRB Rep. Feb. 491 concluded that maintenance mechanics did not constitute a craft unit because “the several craft unions that have applied for certification for such units have rarely succeeded in showing that *according to established trade union practice* they commonly bargain for their respective classifications in the maintenance department separately and apart from other employees.” [emphasis added]. But the Board went on to say that even if the applicant had been able to satisfy this requirement, it did not satisfy the third requirement because:

... In so far as the third condition is concerned, counsel for the applicant contended that the International Union of Operating Engineers and its locals pertain to the skill or craft of maintenance electricians. In this connection he told us that he was relying on the dictionary meaning of the word “pertaining”, which speaks in terms of “belonging to” or being “associated with”, that the electricians were closely associated with the stationary and hoisting engineers and that, by virtue of such association, they were included in a number of bargaining units for which the International Union of Operating Engineers or its locals were the bargaining agents. If the word “pertaining” were given such broad meaning, it would follow that any trade union, which could show that it included electricians in its membership and that electricians were included in bargaining units for which it bargained, would be able to claim craft rights under the provisions of subsection 2 of section 6. If this interpretation of the subsection were adopted, industrial unions, almost without exception would be able to fragmentize every industrial or commercial undertaking in which craftsmen were employed and to organize and be certified for one craft at a time. Such an approach to subsection 2 of section 6 would be so foreign to the history and practices of collective bargaining in this Province during the last two decades that it would require the clearest language in the subsection to convince us that that is what the Legislature intended. In our opinion, the word “pertaining” must be given a more restricted meaning. The meaning which commends itself to us appears in the Shorter Oxford Dictionary and it is “to be appropriate to”. That indeed is the principle that has been followed by the Board since the present Act came into effect in interpreting and applying this subsection. ...

110. Although the PWU does seek to displace IBEW Local 1788 as the collective bargaining representative of craft bargaining units, it does so on the basis of a displacement application or “raid”, and not because it seeks to be recognized as a craft union either under section 9(3) or otherwise. But the PWU does seek status as a section 126 trade union, namely, as a union which “according to established trade union practice pertains to the construction industry”. This is why the section 9(3) jurisprudence is instructive.

111. Having determined that “pertains” should be given a restrictive meaning in section 9(3) of the Act, the Board went on in subsequent cases to conclude that in order to establish that it pertains to a particular set of skills or craft, a trade union had to establish, as the *Firestone, supra*, decision suggested, that it had a history or *practice* of representing employees who exercise such skills or craft in *separate* bargaining units, and not as part of an all employee or other broader bargaining unit. The key thing is the separation (see, for example, *Dupont of Canada Limited*, [1965] OLRB Rep. Jan. 538; *Automatic Fuels Ltd.*, [1966] OLRB Rep. Apr. 22; *Orangerooft Canada Ltd.*, [1974] OLRB Rep. Nov. 761; *Pre-Con Murray Limited*, [1969] OLRB Rep. Jan. 1003, which stands out as a lonely anomaly in the jurisprudence when it suggests that an appropriate constitutional provision is sufficient in that respect).

112. I respectfully agree, and I think this analysis is applicable to the issue in these proceedings. I have concluded that it is appropriate to give section 126 a similarly restrictive interpretation, not only because the structure of the Act generally and the words used (particularly the word “pertains”) in section 126 suggest that this is appropriate, but also because the “established trade union practice” in the construction industry is one of bargaining units which consist exclusively or at least primarily of construction employees. Indeed, where the building trades unions are involved (other than the Labourers or Carpenters unions outside of the ICI sector), construction bargaining units generally consist of employees of a single craft or trade. But even where that is not the case, and even where the trade union is other than one of the building trades unions, bargaining units in the construction industry consist entirely, or virtually entirely, of construction employees. Accordingly, in order to establish that it is a section 126 or construction industry trade union, the PWU must establish a history of representing construction employees separate and apart from other employees.

113. The PWU has not established this. On the contrary, there is no evidence that the PWU has ever represented construction employees separate and apart from other employees. Indeed, it is apparent from its own campaign literature in support of its friendly raid of IBEW Local 1788 herein that the PWU thought that that is what these applications would *give it*; that is, a separate construction industry bargaining unit - although even then not one which would include any of the PWU members who have historically performed construction work. On the contrary, the PWU’s documents display its intention to keep the construction employees it has historically represented as part of the much larger Ontario Hydro bargaining unit separate and apart from the construction employees who are the object of its affections in these applications.

114. The fact that the PWU has represented employees who have performed construction work, however continuously and regularly they have done so, as part of a much larger bargaining unit does not assist the PWU. However large or significant the amount of construction work PWU members have performed as employees of Ontario Hydro in absolute terms, neither the amount of work nor the number of PWU members who have performed it is large in relative terms. That is, the work of PWU bargaining unit employees has never been primarily or even mostly construction work, and the number of construction employees within the PWU Ontario Hydro bargaining unit has never approached even 50 per cent.

115. Of the two points, the latter is of greater significance in these applications. The evidence reveals that what is now the PWU traces its roots at Ontario Hydro back to an employees’ association established in or about 1947. Subsequently, this organization became the Ontario Hydro Employees’ Union, Local 1000 of the NUPSE, CUPE Local 1000, and finally (in 1993) the PWU. Taking the PWU’s evidence at its highest, it has represented an ever decreasing cadre of actual construction employees to whom a separate part of its collective agreement with Ontario Hydro was devoted (although even then not everyone covered by the “construction division” or “construction trades” section of this collective agreement actually spent the majority of their time performing construction work). In 1952, for example, there were approximately 9,000 bargaining unit employees represented

by what is now the PWU. Of these, some 900 were in the construction division, of whom some 800 were actual construction employees. In 1952, construction employees represented by the PWU were in effect “red circled” within the PWU bargaining unit. The building trades unions established a presence at Ontario Hydro, and PWU construction employees were given the option of joining a building trades union or remaining within the PWU bargaining unit. Subsequently, the number of construction tradesmen as such steadily declined, although the number of “technical” employees covered by the PWU collective agreement, more than a few of whom appear to be single or multi-trade construction employees increased. Although the evidence in this respect is rather vague (which may in itself suggest something about the PWU’s approach), the number of construction tradesmen so called in the PWU bargaining unit continued to decline and eventually (in 1990) the “construction trades” section disappeared from the PWU’s collective agreement with Hydro (although there continues to be a “construction weekly-salary” part in it). The “technical” classifications, which include many of the PWU’s bargaining unit employees who perform construction work, have continued to exist, with the actual number of employees in these classifications fluctuating along with the rest of, although not necessarily in proportion to, Ontario Hydro’s overall PWU’s work force. On the evidence, there are anywhere from 2,700 to 4,000 “construction” employees, in a PWU bargaining unit of approximately 12,000 employees.

116. Ultimately, what it all comes down to is this this. For approximately 60 years, the organization which is now called the PWU has represented an all employee bargaining unit of employees of Ontario Hydro. Although this bargaining unit has always included a significant number of employees who have performed construction work, the bargaining unit has always been primarily a non-construction bargaining unit. The PWU bargaining unit is much closer to the non-construction end of the work spectrum at Ontario Hydro than it is to the construction end. The evolution of the PWU reflects operational developments at Ontario Hydro, and the development of parallel but not mutually exclusive work forces: namely, the primarily maintenance/non-construction work force represented by the PWU on one hand, and the primarily construction work force represented by the building trades unions on the other. This is reflected in the jurisdictional dispute litigation, and the two Accords entered into in an effort to resolve the jurisdictional struggle between the PWU and the building trades unions, and even in the PWU’s own campaign literature in the referendum it conducted before bringing its applications herein.

117. What does a construction trade union look like? A construction trade union does not have to restrict itself to representing one or a few trades. Most non-building trades construction unions do not, and not even all building trades unions do so outside of the ICI sector. A construction trade union does not have to operate a hiring hall, although the vast majority do. A construction trade union doesn’t have to operate an out-of-work list (i.e. a list of unemployed members who can be referred to employers who are obliged to hire unemployed members before they can hire “off the street”) but there are few (if any) which don’t (even Teamsters Local 91 in Ottawa which does not operate a hiring hall as such keeps an out-of-work list). A construction trade union does not have to operate health, welfare, pension or other benefits plans, either jointly with employers or alone, or operate a training or apprenticeship program, but most do. A construction trade union does not have to have or aspire to bargaining rights with more than one employer, but again, most do. Although a union does not *have* to have any of these characteristics in order to be a construction trade union, the fact is that every construction trade union of which the Board is aware (both on the materials before the Board in this case, and as the expert tribunal in the field) has at least some of them. That is, these characteristics indicate the *practices* which have become established in the construction industry. The fewer of these characteristics that a trade union has, the less likely that it is construction trade union. The PWU has *none* of them.

118. The PWU has made an attempt to take on some of the characteristics of a construction trade union by entering into the agreement cited at paragraph 91, above, and by amending its constitution to



include a “Power Workers’ Union Construction Council”. These envisage a separation between the existing PWU bargaining unit at Ontario Hydro and the bargaining units it seeks to represent in its applications herein, and a hiring hall for the latter. However, the PWU’s “Construction Council” is an empty vessel, and in these applications the PWU relies on its existing primarily non-construction bargaining unit in support of its assertion that it is a section 126 or construction trade union.

119. Further, the PWU has always looked and acted like a non-construction trade union. It has always represented an all employee bargaining unit, albeit a large (both in number and geographic area) and diverse one. The PWU has always conducted itself as though it is governed by the “general” provisions of the Act, not the construction provisions, both generally and in matters relating to collective bargaining with Ontario Hydro (or other employers). For example, the PWU has never applied for certification under the construction industry provisions of the Act, it has sought conciliation as a non-construction trade union, it has never tried to refer a grievance to the Board under (what is now) section 133 of the Act (an expedited arbitration provision available only to construction trade unions), in its jurisdictional litigation it has conducted itself like a non-construction trade union, and in its dealings with Ontario Hydro (in matters of hiring, for example) it has not conducted itself anything like a construction trade union.

120. But most importantly, the one thing that a trade union absolutely must do in order to be a construction trade union, is represent at least one bargaining unit of construction employees; that is, a bargaining unit composed at least primarily of construction employees separate and apart from other employees. This the PWU has never done.

121. In the result, I reject the PWU’s first and main proposition. I also reject its second proposition, and I do so for similar reasons.

122. The PWU argues that it is appropriate to incorporate the definition of “construction industry” into section 126 so that the latter reads:

“trade union” means a trade union that according to established trade union practice pertains to the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipelines, tunnels, bridges, canals or other works at the site.

That is; a trade union which has collective bargaining dealings with a construction industry employer who satisfies the section 126 definition of “trade union”.

123. The PWU points out that the Board has interpreted the section 126 definition of employer as meaning that any employer which operates *any* part of its business in the construction industry is a construction industry employer for purposes of the Act. As the Board put it in *Briecan Construction Limited, supra*: “... if an employer employs workers performing construction work then he is an employer in the construction industry for purposes of the construction industry provisions of the Act.” (See also *Risdale Steel Fabricators Ltd., supra*.).

124. What the PWU suggests with respect to incorporating the definition of “construction industry” into the section 126 definition of “trade union” is probably correct. However, the conclusion it draws from the resulting paraphrasing of the definition ignores the “established trade union practice” component of the definition. That is, the PWU cannot establish that the way that it “pertains to” or deals with construction industry employees accords with the established trade union practice in that respect. It displays none of the practices which are characteristic of section 126 trade unions; and, most importantly, it has never represented a separate primarily construction bargaining unit.

125. I also note that the section 126 definition of “employer” does not mirror the section 126 definition of “trade union”. It specifically does not contain a phrase analogous to “according to established trade union practice pertains to the construction industry”. Further, although it may raise a question about the Board’s approach to who is an employer in the construction industry, it surely cannot be that any trade union which has a collective bargaining relationship with any employer which has any part of its business in the construction industry is a section 126 trade union. If that were so, there are many trade unions which might be surprised to learn that they are construction trade unions. For example, many School Board’s have been found to be employers in the construction industry. If the PWU’s position was sustained, it would mean that the Ontario Secondary School Teachers’ Federation, and all the other teachers’ unions, would satisfy the section 126 definition. So would the Locals of the Ontario Public Service Employees Union which represent occasional teachers at some School Boards, and the various CUPE Locals which represent maintenance or other staff at various School Boards. In short, it would render the distinction which the Act clearly draws between the construction and non-construction trade unions virtually meaningless. I therefore reject that proposition as well.

126. Indeed, although in these proceedings, the PWU asserted it is a construction trade union for the purposes of the Act, it is apparent that prior to these proceedings it had a different and more accurate assessment of its status; namely, that it was not a construction trade union. The PWU incorrectly thought that it could become a construction trade union by raiding IBEW Local 1788, apparently overlooking the fact that it had to already be a construction trade union before it could successfully conduct such a raid.

#### **VI Conclusion (The PWU is not a Construction Trade Union) and Disposition**

127. In conclusion, I am satisfied that the PWU is *not* a trade union within the meaning of section 126 of the *Labour Relations Act, 1995*. The PWU is therefore not entitled to bring any of its three applications for certification herein, and the applications in Board File Nos. 0164-95-R, 0186-95-R and 0187-95-R are therefore dismissed.

128. The Registrar is directed to destroy the ballots cast in the votes conducted in the PWU’s applications herein 30 days after the date of this decision, unless within that 30 day period someone who has the status to do so files a fully particularized request that the ballots not be destroyed and the Board is satisfied that the request makes out a cogent *prima facie* case for not destroying the ballots.

129. The parties to the application of Board File No. 0251-95-R are directed to file written representations setting out their positions with respect to how that application should proceed. Any party which fails to do so within 21 days of the date hereof, will not be entitled to any further opportunity to address the Board in that respect, and the Board may proceed with that application without any further notice to it.

#### **VII Cautionary Note**

130. Nothing in this decision should be taken to suggest that the PWU is not entitled to represent the employees in its Ontario Hydro bargaining unit who perform construction work (see paragraphs 64 and 65, above). Nor should anything in this decision be taken to suggest that the PWU does not have a sustainable claim to the construction work its members have historically performed for Ontario Hydro. If necessary, the merits of any such claim are appropriately dealt with in a jurisdictional dispute complaint.

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**0899-96-R** International Association of Machinists and Aerospace Workers, Applicant  
v. **R-Theta Inc.**, Responding Party

Certification - Constitutional Law - Charter of Rights and Freedoms - Fraud - Employer asserting that certificate ought not to issue, despite union having won representation vote, because union allegedly knowingly misrepresented number of employees in proposed bargaining unit so as to put union in vote position - Employer arguing that misrepresentation amounting to fraud - Union submitting that section 64 of the Act not applying because no certificate yet obtained and that employer not making out *prima facie* case of fraud- Board declaring that union entitled to certificate - Board rejecting submission that union required to exercise due diligence in providing Board with estimate of number of employees in unit, but listing matter for hearing on issue of whether certificate obtained by fraud - Board also rejecting submission that Charter rights denied because notices and ballots provided only in English and French and not in other languages of workplace

**BEFORE:** K. G. O'Neil, Vice-Chair, and Board Members R. W. Pirrie and K. S. Brennan.

**APPEARANCES:** Jeffrey Sack for the applicant; Timothy P. Liznick for the responding party.

**DECISION OF THE BOARD;** February 14, 1997

1. This is an application for certification. A representation vote has been held, with the union receiving more than 50% of the 65 votes cast. This decision deals with the employer's request that the vote results not determine the matter.
2. A related application under section 1(4) has been adjourned pending the outcome of this matter.
3. Employer counsel argued three issues, in the alternative, which will be set out below and dealt with in turn. The union argues that even accepting the facts pleaded as true, there is no *prima facie* case for the remedies requested by the employer. The issues before us are the following:
  1. That the 40% support necessary to warrant a representation vote in a certification application should have been determined using the actual number in the proposed unit, rather than the number given by the applicant.
  2. That the Board should grant a declaration of fraud under section 64, because, prior to the application, the applicant was made aware of the number of employees in the bargaining unit proposed, and that the number was increasing as a result of a need to expand. Nonetheless, the applicant registered a lower number in its application.
  3. That there has been a denial of employee rights under section 15 of The Canadian Charter of Rights and Freedoms, in that an employee in the proposed bargaining unit who speaks Gujarati misunderstood the ballot since it was not in her own language, and misrecorded her vote. The Attorney General was given notice of this issue prior to the hearing, but indicated his office would not be intervening at this stage.



### The 40% issue

4. The issue raised by the employer as to the manner in which the 40% requirement in section 8(2) of the Act should be calculated is not new. The issue, and the arguments made before us, were raised and disposed of on the basis of a different interpretation than the one proposed by the employer in this case in two recent decisions of this Board, *Burns International Security Services Limited*, [1996] OLRB Rep. March/April 192 and *The City of Toronto*, [1996] OLRB Rep. July/Aug. 552, application for judicial review dismissed January 30, 1997, Divisional Court File 508/96. Essentially, the employer disagrees with the reasoning in those cases, and the union submits that we should follow that reasoning.

5. Employer counsel observes that all the things that the Board used to use, prior to Bill 7, to determine who was actually in the bargaining unit, such as a list of employees, specimen signatures, and the like, were not in the statute, whether Bill 40, or its previous form. Rather, the Board developed these things as a matter of practice in order to be able to make the determination which the statute of the day required. It is said that the same elements are in section 8(2) of the Act, and that in refusing to make the determination of the number of people in the proposed bargaining unit, the Board is declining jurisdiction.

6. As to the practicalities of making the determinations that the employer argues for in the context of a five day vote, counsel says it is “dead simple”: the Board should determine a voter’s list, with the benefit of the doubt going to the union. Whatever they say is the appropriate bargaining unit should be used to measure how many people are in the bargaining unit. If they say certain people should be included they go in, if not they are out. The essence of the employer argument is that if there is to be faith in the process, there has to be an open adjudication as to the numbers in the bargaining unit prior to the vote.

7. For the reasons set out in *The City of Toronto*, cited above with which the majority of this panel, Mr. Pirrie dissenting on this point, are in agreement, we are of the view that it was appropriate for the Board to base its assessment of the 40% threshold in section 8(2) of the Act on the material provided by the applicant. We disagree with employer counsel that it is a declining of jurisdiction to proceed in that manner. Rather, we think it is the correct reading of the statute as a whole, and consistent with the legislative intention in bringing in a system based on quick votes. Further, the practicalities are such that the litigation of the number of people in the bargaining unit prior to a vote would make the five day vote impossible to obtain. It would apply then only in cases of agreement, which does not appear to have been the intention of the legislature in redoing the basis for certification to that of a quick vote. Moreover, despite the arguments of counsel as to the simplicity of a system where the adjudication of the bargaining unit could be done on the basis of the benefit of the doubt going to the union, that approach is unlikely to produce a satisfactory result, either as to accuracy or acceptability to the employer community at large.

8. Nor do we think the matter is to be litigated on the basis suggested after the vote. The matter is succinctly put in paragraph 138 of *The City of Toronto*, as follows:

138. Had the Legislature intended some *ex post facto* determination of *actual* 40 per cent card support, as opposed to an *appearance* of 40 per cent support, the Legislature could have reproduced language such as section 9(4) of the old pre-hearing vote procedure. However, when one compares the language of the current statute to the language of section 9 of the old Act, it is evident that the Act *used to, could have, but now does not* make a *finding* of *actual* support at any level (as opposed to the appearance of support) a condition precedent to certification. The structure of Bill 7 does not envisage later litigation about, or confirmation of, the section 8(2) decision. Nor, as we have already mentioned, is “front end litigation” practically feasible in 5 days, or seemingly permitted by section 8(4).

### The fraud issue

9. The facts pleaded in regards to fraud are as follows. There was a meeting with a Labour Relations Officer in regards to a related application under section 1(4) of the Act, about five weeks before the application date. At that meeting, union counsel asked how many people were in the bargaining unit, and a representative of the company advised the union that as of that date there were 64 persons in the bargaining unit, and that the company was continuing to hire more people into the bargaining unit. The number recorded in the application was 57.

10. As well, it is common ground that there was a recent move by the employer to the location which is the subject of this application and that the applicant had bargaining rights for the previous location. The employer submitted in argument that the union was in receipt of a list of people for whom dues were remitted at the previous location which shows that for the most recent month available prior to the certification application, there were 61 people in the bargaining unit. Employees at the previous location were guaranteed employment at the new location and none declined. The applicant says that it was not actually in receipt of that list, but for the purposes of this preliminary matter, we have accepted the employer's asserted facts.

11. The number given by the union in its application was 57, less than either of the numbers referred to above. The number of cards submitted by the applicant was 25, which represents more than 40% of 57, the number the union gave in the application, and of 61, the number on the dues remittance list, but less than 40% of 64, the number given by the employer in the five weeks before the application date, and also less than 40% of 65, the number eventually agreed on for the voters list.

12. On the basis of those facts, the employer says that the applicant was fully aware that the bargaining unit was composed of more than 64 employees, but nonetheless provided 57 as the number in its application. We are urged to conclude that the applicant was consciously misleading the Board, and that we should make a declaration of fraud under section 64. The employer says there is no reasonable explanation for the union's having given the lower number, after they had been clearly told that the forecast was for rising numbers, except that they only had 25 cards. In these circumstances, employer counsel submits that offering the number 57 on the application amounts to the gerrymandering of which the Board warned in *Burns Security* cited above. Employer counsel says that fraud includes recklessness or carelessness as to whether something is true or false. He says that the union should have to respond at least on the question of recklessness, even accepting the union's assertion that it did not check the dues list. At the very least, submits counsel, the Board is in the position of having an apparent misrepresentation on the face of the A-4, and no explanation from the union. The parties should be held to a due diligence standard, and the union should be required to explain its conduct. Especially if the Board is going to maintain the approach taken in *The City of Toronto*, where the union's numbers are going to determine whether a vote is held, the union must be held to the strictest standards of honesty and due diligence. And it is submitted that any comments about fraud in *The City of Toronto* decision are obiter and not binding.

13. Although employer counsel argued the *prima facie* case on the threshold of recklessness, he submits that "there may be more to it", and therefore he has asked the Board to compare the cards with the list of employees to see if there are any discrepancies. Employer counsel argues that because of section 64(2), The Board is not restricted by section 7(13), and can look at more than just the information provided by the applicant. When asked to particularize his allegation about the membership evidence by union counsel, employer counsel said he was not in a position to do so because he did not know what evidence had been submitted, but that it would be a simple proposition to compare the signatures and appoint a Labour Relations Officer.

14. As to whether the Board ought to conduct an inquiry every time there was a difference between the numbers in the application and response, employer counsel said it would not be every time, but in circumstances such as these where the union was clearly told the number of employees in the proposed bargaining unit.

15. Employer counsel says that the honour system is not much good if there is no down side to not being honourable. He asserts that this case is the fact situation that *The City of Toronto*, cited above, said would not happen: intentional misrepresentation of the numbers in order to get a vote. Counsel says that reasoning gives an incentive to any union whose membership evidence is getting stale to give a number that shows 40% and then “roll the dice” to see what they can get out of a vote.

16. We are asked to declare that the applicant breached the statute and does not represent the employees in the proposed bargaining unit. Where there is no demonstration of 40% support, the Board has no discretion to order a vote, and therefore the vote held here should be considered void *ab initio*, and should not affect the result in this case.

17. Further, it is said, there should be no difficulty in considering the fraud question before a certificate is granted. Otherwise, the Board would be requiring the parties to return. One could take the view, counsel submits, that “but for” the allegations, a certificate would issue, and/or that one could notionally issue the certificate and revoke it for fraud. In any event, at least section 64(2)(a) does apply. Applying that section, counsel asks for a review of all the membership evidence by the Board.

18. In summary employer counsel argues that, given the seriousness of the fraud allegations, we are entitled to hear the union’s explanation through *viva voce* evidence on behalf of whomever made inquires about the numbers in the bargaining unit.

19. Counsel for the union submits that the facts as pleaded do not make out a case for fraud, but rather a case where the union and the employer have provided different numbers in their pleadings, as in *Burns* and *The City of Toronto* cases, cited above. The union argues that firstly, section 64 does not apply on its face because no certificate has been obtained, but in any event the facts pleaded do not amount to deliberate misrepresentation or reckless disregard for the facts, the definition of fraud set out in *Edward R. Kantowicz*, [1976] OLRB Rep Aug. 450 at para. 10, quoting from *Derry v. Peek*, (1889) 14 A.C. 337 at p. 374.

20. Further this is not the kind of case of which *Burns* warned, asserts union counsel. This is at best error at the margins; the pleaded facts do not show an attempt to mislead. Union counsel also refers to *Ontario Taxi*, [1981] OLRB Rep. Sept. 1280 for the proposition that even where fraud is established, which is denied here, it does not necessarily mean a certificate will be withdrawn.

21. Further, counsel underlines that, in reference to the provision of the lower number in the form A-4, which verifies the membership evidence submitted, that form only asks for the number the union *believes* to be in the unit and does not require the union to be correct. More fundamentally, union counsel argues that neither inaccuracy, nor due diligence, are the test for fraud on the Board. The union submits that the Board’s jurisprudence indicates that the fraud it has been concerned about is fraud in acquiring membership evidence. As the allegation before the Board has nothing to do with the collection of the membership evidence, the Board should not be concerned about it. In this respect, counsel refers to the remarks about fraud at paragraphs 141 and ff. of *The City of Toronto*, and asserts they are not obiter. Rather, the union asserts they are part of the reasons the Board gives as to why they prefer the interpretation given to the Act in that decision. Union counsel argues that this case illustrates the wisdom of the interpretation given in *The City of Toronto*, and predicts the Board would be tied up in fraud litigation all the time if this is allowed to go forward. As that case pointed out, 5 day votes



would be impossible if one inquired into such issues; that is why section 8(9) is there, submits union counsel - that there will be no cases where fraud is not alleged.

22. Further, although the union submits it can explain how it arrived at the number it put in the application in a reasoned manner, counsel argues that there is no reason that the union should have to accept the employer's numbers. The union is asked on the application for its estimate, and there is no reason why the union should accept or do anything in particular with the employer's estimate. Further, union counsel observes that the number is clearly fluctuating even on the employer's estimates. It is 65 in the response; it was 61 in the dues remittance sheets, and 64 in the meeting a month before the application. The 25 cards represent 40% of the employers' number 61 on the dues sheet.

23. In any event, union counsel argues that the employer's case is inconsistent with the reasoning in *The City of Toronto*, that the ultimate matter of concern should be the vote. There are sanctions provided in the Act for misrepresentation, such as a bar for a year. It urges the Board to maintain the position that the initial determination of 40% is an administrative matter, that any errors in the numbers will be cured in the vote.

24. As a factual matter, counsel observes that this is the extraordinary case in which every single person in the bargaining unit voted; the wishes of everyone have been tested. Knowing the union's estimate of numbers, the employer still insisted that the vote be counted, and the union withdrew its objection at the end. The employer had an obligation to indicate an objection to the counting of the vote in the union's submission.

\* \* \*

The relevant provisions are as follows:

7. (12) The application for certification shall include a written description of the proposed bargaining unit including an estimate of the number of individuals in the unit.

(13) The application for certification shall be accompanied by a list of the names of the union members in the proposed bargaining unit and evidence of their status as union members, but the trade union shall not give this information to the employer.

8. (1) Upon receiving an application for certification, the Board may determine the voting constituency to be used for a representation vote and in doing so shall take into account,

- (a) the description of the proposed bargaining unit included in the application for certification; and
- (b) the description, if any, of the bargaining unit that the employer proposes.

(2) If the Board determines that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appear to be members of the union at the time the application was filed, the Board shall direct that a representation vote be taken among the individuals in the voting constituency.

(3) The number of individuals in the proposed bargaining unit who appear to be members of the trade union shall be determined with reference only to the information provided in the application for certification and the accompanying information provided under subsection 7(13).

(4) The Board shall not hold a hearing when making a decision under subsection (1) or (2).

(5) Unless the Board directs otherwise, the representation vote shall be held within five days (excluding Saturdays, Sundays and holidays) after the day on which the application for certification is filed with the Board.

(6) The representation vote shall be by ballots cast in such a manner that individuals expressing their choice cannot be identified with the choice made.

(7) The Board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until such time as the Board directs.

(8) After the representation vote has been taken, the Board may hold a hearing if the Board considers it necessary in order to dispose of the application for certification.

(9) When disposing of an application for certification, the Board shall not consider any challenge to the information provided under subsection 7(13).

**10.** (1) The Board shall certify a trade union as the bargaining agent of the employees in a bargaining unit that is determined by the Board to be appropriate for collective bargaining if more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union.

(2) The Board shall not certify the trade union as bargaining agent and shall dismiss the application for certification if 50 per cent or less of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union.

(3) If the Board dismisses an application for certification under this section, the Board shall not consider another application for certification by the trade union as the bargaining agent of the employees in the bargaining unit until one year has elapsed after the dismissal.

**11.** (1) Upon the application of a trade union, the Board may certify the trade union as the bargaining agent for the employees in a bargaining unit in the following circumstances:

1. An employer, employers' organization or person acting on behalf of an employer or employers' organization has contravened the Act.
2. The result of the contravention is that a representation vote does not or would not likely reflect the true wishes of the employees in the bargaining unit about being represented by the trade union.
3. No other remedy, including the taking of another representation vote, is sufficient to counter the effects of the contravention.
4. The trade union has membership support adequate for the purposes of collective bargaining in a bargaining unit found by the Board to be appropriate for collective bargaining.

(2) Upon the application of an interested person, the Board may dismiss an application for certification of a trade union as the bargaining agent for the employees in a bargaining unit in the following circumstances:

1. A trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions has contravened the Act.
2. The result of the contravention is that a representation vote does not or would not likely reflect the true wishes of the employees in the bargaining unit about being represented by the trade union.
3. No other remedy, including the taking of another representation vote, is sufficient to counter the effects of the contravention.

(3) The Board may consider the results of a representation vote when making a decision under this section.

(4) Subsections 10(1) and (2) do not apply with respect to a representation vote taken in the circumstances described in this section.

64. (1) If a trade union has obtained a certificate by fraud, the Board may at any time declare that the trade union no longer represents the employees in the bargaining unit and, upon the making of such a declaration, the trade union is not entitled to claim any rights or privileges flowing from certification and, if it has made a collective agreement binding upon the employees in the bargaining unit, the collective agreement is void.

(2) Subsection 8(9) does not apply with respect to an application for a declaration under subsection (1).

(3) If an applicant has obtained a declaration under section 63 by fraud, the Board may at any time rescind the declaration. If the declaration is rescinded, the trade union is restored as the bargaining agent for the employees in the bargaining unit and any collective agreement that, but for the declaration, would have applied with respect to the employees becomes binding as if the declaration had not been made.

(4) Subsection 63(13) does not apply with respect to an application for the rescission under subsection (3) of a declaration.

25. We turn first to the issue of when fraud allegations should be dealt with under the provisions of Bill 7. The historical context is that under previous versions of the Act, fraud allegations were dealt with whenever they were raised. In particular, if they were relevant to entitlement to a certificate, the Board dealt with them prior to issuing a certificate. Fraud related to the membership evidence itself (non-signs or non-pays) or in relation to the form verifying it, depending on its nature and extent, could lead to the dismissal of an application, even if a majority of employees had expressed a desire for representation. As well, allegations of misrepresentation or a failure to make sufficient enquiries to be able to verify the reliability of the membership evidence were dealt with as relevant to whether the Board should rely on the evidence filed to determine the wishes of the employees, or entitlement to a representation vote. This was all framed by the fact that the system before Bill 7 was primarily a document based system, with the representation vote a residual mechanism where clear majority support was not demonstrated by the cards, or there was some doubt which the Board, in its discretion, could resolve through a representation vote.

26. When Bill 7 was passed, the system was changed to one that is primarily vote based, although membership evidence is still essential for the entitlement to a vote (section 7(13)). And the statute gives quite specific directions about what information shall be relied on by the Board and at what stage in making its determinations. The system provides for a vote which is directed by the Board without holding a hearing (section 8(4)), based only on the information in the application for certification. That information relates to the appearance of membership of 40% of the employees in the bargaining unit proposed in the application and the accompanying membership evidence (sections 8(2) and (3)). If the Board considers it necessary in order to dispose of the application for certification, the Board may hold a hearing after the vote. However, in disposing of the application for certification, the Board is not permitted to consider any challenge to the membership evidence (section 8(9)).

27. As always, the Board is required to determine the appropriate bargaining unit for the application (section (9)). Then as a result of the vote, the Board is required to certify a trade union if more than 50% of the ballots cast by employees in the bargaining unit have voted for the union (section 10).

28. The combination of these legislative provisions describes a quick vote system for normal certification applications, where a hearing is not available prior to a vote being held. After the vote is held, a hearing is held only if the Board considers it necessary to dispose of the application. Even at this stage, litigation is restricted explicitly. The Board is not permitted to consider any challenge to the information provided under section 7(13), the names of union members and evidence as to their status as members. This is a significant change, as it was formerly the normal practice to dispose of challenges



to the membership evidence before an application was determined. Now, the statute says the Board is not to do that.

29. And section 10 is quite specific as to what shall be done with the vote results. If the union receives more than 50% of the votes cast by employees in the bargaining unit determined to be appropriate, the Board shall certify. And if the union does not receive that level of support, the application is dismissed with a bar. It is section 10 which determines what issues are necessary to deal with prior to disposing of a certification application. They are the identification of the employees voting as ones within the bargaining unit which has been determined to be appropriate, and the ascertainment of the count.

30. The statute articulates certain exceptions to the “normal” route described above. These are in section 11. The Board may certify without a vote where the employer has contravened the Act and the results of that are such that the true wishes of the employees are not likely to be ascertained, no other remedy will suffice, and the union has adequate support for collective bargaining. And the Board may dismiss an application where the union has contravened the Act such that the true wishes of the employees do not or could not be ascertained and no other remedy, including the taking of another vote is sufficient. When either of these situations occur, the Board is not bound by the requirements of section 10 as to granting or dismissing a certification application. The situations of illegality in section 11 are the only exceptions to the entitlement of a union to certification after winning a representation vote as set out in section 10.

31. The question before us is as to the role of section 64 prior to the issuance of a certificate. Its position in the Act is in the grouping of sections 62 to 66 which are entitled “Termination of Bargaining Rights.” The terms of subsections 64(1) and (2), which deal with certification applications, presuppose pre-existing bargaining rights which have been obtained by fraud. We are urged by employer counsel to find that there is no reason not to hear the fraud allegations prior to a certificate being granted, because otherwise, the parties will be required to return unnecessarily to litigate the matter later. The union argues that on its face the section does not apply, because no certificate has been obtained.

32. The statutory wording is clear. A remedy in respect of a certificate under section 64 is only available after a certificate is obtained. But there is much to be said for the idea that it is preferable that such an issue be dealt with at the outset - if only because a new relationship between management and union is better started without such allegations lingering unresolved, one way or the other. Counsel proposed the device of a notional certificate to deal with any difficulty in hearing the matter before a certificate is granted. It appears to the Board that this problem can be dealt with where the allegations are raised in the course of the certification proceedings in a practical manner. Submissions and/or evidence may be entertained in whatever manner seems appropriate to the Board in controlling its own procedure as required by section 110(16). The Board may then determine the issues in the sequence contemplated by the statute, orally or on reserve, as appropriate in the circumstances. The Board often lists issues between the same parties together for practical reasons, even if one needs to be determined before another.

33. On the facts of this case, the result of the vote and the agreement of the parties on the bargaining unit that is appropriate leaves the Board with all the elements to decide that the union is entitled to a certificate, and we so declare.

34. Turning to the allegation before us, the facts pleaded indicate that about five weeks before the application was filed, the employer indicated that the number of employees in the proposed bargaining unit was 64, seven higher than what the union put in the application, and that hiring was going on. The number agreed to for the voters list was 65. Although the union may have a strong defence to this allegation, the majority of the panel, Ms. Brennan dissenting on this point is of the view

that the company has a sufficiently arguable case that the matter should be relisted for hearing on the issue of whether the certificate was obtained by fraud.

35. As to the suggestion that the Board should inquire into the membership evidence at large, there is no allegation that anyone for whom the union submitted a card did not sign a card. The Board does not normally inquire into membership evidence on unparticularized allegations and is not prepared to do so here. See, among others, *The Mississauga Hospital*, [1990] OLRB Rep. Dec. 1304.

36. Employer counsel further asserted that the Board should, in the absence of fraud, be requiring due diligence in the estimates provided and a hearing should be held on this issue. This is not the standard set by the legislature. As set out above, the new scheme of the Act provides for certification on the winning of a vote, with the exception of cases of breaches of the Act (section 11), and 64 is available to deal with allegations of fraud. A hearing as to whether pleadings were filed with due diligence in every case where the other party does not agree with the filings would add a step to the process which would have the effect of derailing the legislature's intended system. We are thus not of the view that this matter should be put on for hearing to determine if the union exercised due diligence in providing its estimate.

### **The Charter issue**

37. The Board's notices and the ballots in this case, as is its ordinary practice, were printed in English and French. It is common ground that a large majority of the employees in this workplace speak languages other than English or French. The employer offers the evidence of a Gujarati speaker who approached management after the vote to say that she mismarked her ballot because of her difficulties with English, and the evidence of its Human Resources Manager who will say that many of the employees did not understand the ballot. Further, the employer offers evidence about the linguistic background of its work force and the steps the employer usually takes to deal with it.

38. Based on the above facts, it is argued that the Board's failure to provide notices other than in English and French has denied the employee concerned equal protection of the law, as she was discriminated against on the grounds of language. Language is said to be included in the enumerated grounds of race, national or ethnic origin in section 15(1), or to be an analogous ground. The categories of analogous grounds are not closed, as discussed in *Miron v. Trudel*, [1995] 2 S.C.R. 418. Employer counsel says that the provision of the notices only in English and French is *per se* discriminatory, because it does not take into account cultural differences, and resulted in the denial of her right to express her desires under the *Labour Relations Act*.

39. Counsel said that the Charter may guarantee a right to be communicated with in the language of one's origin, but that it at least required the Board to make some inquiry towards providing equal benefit of the law as regards language.

40. Various authorities are referred to for the underlying analysis, including: *Miron v. Trudel*, [1995] 2 S.C.R. 418, *Law Society of British Columbia et al. v. Andrews et al.* (1989), 56 D.L.R. (4th) 1 (S.C.C.), *Mirek Gajecki v. Board of School Trustees, School District No. 36 (Surrey)* (1990), 11 C.H.R.R. 32 (B.C.H.R.C.), *Louise Welen v. Gladmer Developments Limited* (1990), 11 C.H.R.R. 38 (Sask. H.R.C.), *Victor Cornejo v. Opus Building Corporation* (1991), 14 C.H.R.R. 25 (B.C.H.R.C.), *Regina v. Oakes* (1986), 26 D.L.R. (4th) 200 (S.C.C.), *Re Singh and Minister of Employment and Immigration* (1985), 17 D.L.R. (4th) 422 (S.C.C.).

41. The relevant provisions of the Charter are as follows:

**Rights and freedoms in Canada.**

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

\* \* \*

**Equality before an under law and equal protection and benefit of law.**

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

**Affirmative actions programs.**

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

42. The union argues firstly, that the employer has no standing to bring this application under the Charter, that only an employee is in a position to do so. See *Transair* (1976) 67 D.L.R. (3d) 421 (S.C.C.). Secondly, it is submitted that the objection is untimely, as it was raised only when the employer lost the vote; the employer signed the certificate of conduct of election without raising the issue of the language in the workplace. It is said there was ample time for the employer to communicate this concern during the discussions to arrange the vote. The employer raised no concern about this before the vote notwithstanding the fact that it was clearly aware of the composition of its own workplace.

43. More fundamentally, the union submits that communicating in English and French is not a denial of Charter Rights. The proposition that it is, submits the union, is one that has been rejected by both the Board and the courts. The union submits that this is not surprising since otherwise one would have to translate everything into as many languages as there were in any given workplace. It is argued that we are bound by the decision of the Court of Appeal in *R. v. Crete*, (1993) 4 O.A.C. 399. The Court of Appeal said as follows in its brief judgement:

The appellant has limited his argument to section 15(1) of the *Charter* and says that there was discrimination in serving him with a notice in English which he, as a francophone, could not read. This is not a language issue; it is an argument that such notices must be capable of being read and understood by all recipients. Persons who are illiterate or unilingual in any one of a multitude of languages, other than English, are put to more trouble than an English-speaking person when receiving such a document. However, this is a difference which falls short of section 15 discrimination: *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143; 91 N.R. 255; [1989] 2 W.W.R. 289; 56 D.L.R. (4th) 1. All government documents will inevitably be unreadable by some group of persons. It would be trivializing section 15 to declare them all discriminatory and then, as the appellant would have it, turning to s. 1 to justify all except those which affect French-speaking unilinguals.

44. As well, union counsel observes that it is proposed that only one employee is to be called as a witness. Given that the margin by which the union won the vote was three votes, even if her vote went the other way, the result would not have been affected.

45. In reply, the employer argues that the board has, unintentionally, constructively denied the fundamental Charter right to be free of discrimination on ethnic grounds, and the effect of that has been to deny the employee the right to choose the applicant of their choice.



46. The employer says that it is not necessarily incumbent on the Board to send out notices in all the languages of the workplace, but that it should ask on its application and response forms what the major language of the workplace is, and then it could translate the forms into what-ever language that was. It is said that this would not be “hugely administratively” difficult. Once translated, the forms would be available for all time, says counsel.

47. As to the timeliness issue, employer counsel says it was not aware of this problem until after the vote when the employee approached a manager. Normally language is not a problem because the supervisors speak various languages of the employees.

48. As to standing, the employer refers to *Federated Building Maintenance*, [1979] OLRB Rep. October 974 at para 9, arguing that the reason that the employer has standing in that case is because it has an interest in making sure it is not entering into a relationship based on fraud. It is submitted that it is the same for the Charter issue. If the right to freely express one’s wishes for a bargaining agent is denied through a denial of a Charter right to equal treatment, that falls within the exception enunciated in *Federated Building*, submits counsel. That case stands for the proposition that it is the Board’s overriding responsibility to see that the employees can freely represent their wishes. As the Charter is the fundamental law of the land, no administrative body can ignore the Charter, submits counsel.

49. Further, counsel argues that this case is a bit different in that the employee did come forward to the employer about the fact that she misunderstood the question posed and had learned later that she had “gotten her answer wrong.” And the employer submits it is no answer to the Charter challenge to say it involves only one employee; she is an example of how these employees were denied their right to equal treatment.

50. Counsel argues that there is a *prima facie* case that there is a Charter right here, on an enumerated or analogous ground, together with conduct, whether or not intentional, which has violated that right. The effect of that violation was a denial of equal benefit of the law, submits counsel. With those elements established, it is submitted, the onus and focus shifts to justification of the limitation as a reasonable limit under section 1 of the Charter. Denial of communication in one’s native language is a denial of the right to express the desire for or against union representation set out in sections 8(1) and 10(1) of the *Labour Relations Act*. The Board has an obligation to make sure all its communications are clear, argues counsel. The fact that the employee in question was treated like all the other employees is not an answer, because the impact on her is different; she received a diminished benefit of the law, submits the employer. She should be on equal footing unless the limitation on her rights can be saved under section 1.

51. Referring to the definition of discrimination in (i.e. *Andrews v. Law Society of British Columbia*) *et al*, (1989), 56 D.L.R. (4th), (S.C.C.), counsel says that all the points have been met to establish the Board’s practice is discriminatory, and that the onus therefore shifts to section 1 justification. On this point, the employer’s position is that no adequate justification exists; the justification of expedition and cost are insufficient and disproportional to the objective.

52. Employer counsel says that a presumption that everyone speaks, understands English or can ascertain English has a discriminatory effect. In determining whether language is an analogous ground, the fundamental consideration will be whether the category or characteristic in question may serve as an irrelevant basis of exclusion and a denial of essential human dignity in the human rights tradition. It need not be necessarily immutable, as with marital status. It is submitted that language may be sufficiently difficult to change that it should be considered immutable in any event.

53. As to the fact that the employer signed the consent and waiver form which allowed the ballots to be counted, employer counsel says that the form only talks about the conduct of the balloting,

and the employer was not aware of any problems at the time it signed. *The Canadian Red Cross Society*, [1994] OLRB Rep. November 1592, relied on by the union, is distinguishable in the employer's submission as it dealt with circumstances where there were allegations during the balloting at the balloting place which the Board found ought to have been brought to the attention of the Board and the union prior to the counting of the ballots.

\* \* \*

54. The Board has held that a mistake in marking a ballot is not sufficient grounds to overturn a vote and that it will not look beyond the ballots to ascertain "what the voter really meant". See *Children's Aid Society of the Regional Municipality of Waterloo*, [1985] OLRB Rep. December 1818 and *RSLs Inc.*, [1982] OLRB Rep. June 921. We agree with the principle enunciated there: to start inquiring into the subjective state of voters' minds would destroy the very confidentiality that a secret ballot vote is intended to create and protect. Ballots are to be given the significance they have on their face. The question to be answered here is whether the result should be any different because the "mistake" in marking the ballot is said to be because of difficulties with the English language.

55. The cosmopolitan nature of the Ontario work force means that language issues are not new to the Board. They arise from time to time, and the Board has consistently held that it is under no obligation to deal with employees in languages other than English or French, and relies on employees with difficulties in those languages to cope as they do in any other aspect of their lives. See, for example, *Admiral Linen Supply Limited*, [1989] OLRB Rep. Feb. 90 and the cases cited therein, as well as *Northfield Metal Products*, [1989] OLRB Rep. Jan. 57.

56. Before turning to our view of the Charter in this context, it is appropriate to note the breadth of what employer counsel is suggesting. It is his view that the Board is under an obligation to inquire of the majority language of every workplace with which it deals and then translate all its communications into that language. This is not the practice of any public body of which we are aware nor was it suggested that it was. Neither federal nor provincial elections are conducted as he suggests. The Francophone community has been known to comment that it is difficult to obtain services even in the second official language of this country. It is asserted that what he asks is easily done; once translated, the forms would be available when needed. Even if the law were not subject to change on a regular basis, or budgets for even the services the Board has provided in the past not shrinking, this assertion does not appear to take into account the very large number of languages in the workplaces of Ontario, as well as the fact that the Board has to communicate flexibly with its users and the forms are not the only, or necessarily the main, vehicle of communication. And it is just not administratively feasible to communicate in a plethora of languages within the time lines required of the Board by the Act with current resources. It is administratively difficult to get five day votes on even in English and French.

57. But if the Charter required that we do so, we agree that the resources would have to be found. However, we are not of the view that the Charter requires us to do so. We are of the view that *R. v. Crete*, cited above, is binding on us and deals with the matter specifically. There the Court rejected the argument that a notice in English served on a Francophone who could not read was discriminatory and infringed the rights protected by section 15 of the Charter. See also *R. v. Simard*, (1995) 270 R. (3d) 116, which dealt with French language rights as independent rights and the right to an interpreter as an element of the right to a fair trial, rather than as a right under section 15 of the *Charter*.

58. We are offered no authority for the proposition that Section 15 provides a positive right to translation of all Board material into the majority languages of all Ontario workplaces. The cases cited, which it is not necessary to analyze in detail here, do not stand for that proposition. Nor is this a question of denial of natural justice or of a fair hearing; persons needing interpretation during Board hearings may participate through an interpreter.

59. Even taking the most broad construction of both the grounds in section 15, and the definition of discrimination, so that adverse effects of government action on the basis of ethnicity would be covered, we do not see that the Charter goes the distance to the result requested by employer counsel. We accept that some employees may not be able to read the Board notices without assistance. But we do not agree that this fact requires the conclusion that employees are receiving a diminished benefit of the *Labour Relations Act* on the basis of ethnicity or membership in any group described by a ground enumerated in section 15 or analogous thereto. It is not the fact of ethnicity or membership in an analogous group which is the basis for difficulty in reading the notice.

60. The differences between individuals which may make it more or less difficult to understand a Board notice cover a huge gamut, including attention span, intelligence, literacy, attendance at work, participation in union activities which give familiarity with the subject, interest, and languages understood. These are so diverse as to escape definition as being a function of ethnicity. The Court in *Andrews v. Law Society of B.C.*, cited above, said at pg. 18, (the majority agreeing with MacIntyre J., on this portion of his analysis) that distinctions based on personal characteristics attributed to an individual solely on the basis of an association with a group will rarely escape the charge of discrimination, while those based on an individual's merits and capacities will rarely be so classed. In our view, the facts of this case are covered by the latter category, i.e. it is a function of an individual's capacity to understand official notices from a wide variety of causes, not membership in any ethnic group, which produces any difficulty in reading Board notices or ballots.

61. We are also of the view that the employer does not have standing to complain of the violation of an individual employee's rights. There is nothing to suggest any reason why any affected employees could not have done so themselves, and it is the employees' individual Charter rights which are at issue here. See *C.L.R.B. and Transair*, cited above at pg. 438, where this issue is dealt with in the general labour law context. For the *Charter* context, see *Canadian Council of Churches v. Canada*, (1992) 88 D.L.R. (4th) 193.

62. Further, and finally, having signed the waiver form concerning the conduct of the vote, the Board requires compelling circumstances, not present here, to inquire into the conduct of the vote.

\* \* \*

63. To summarize, we agree with the reasoning in *The City of Toronto* cited above as to the proper method for determining the 40% threshold for votes and are of the view that there is no reason to reconsider the decision ordering a vote in this case. Further, the results of the vote entitle the applicant to a certificate for the following bargaining unit:

all employees of R-Theta Inc. employed at 6620 Kestrel Road, in the City of Mississauga, save and except forepersons, persons above the rank of foreperson, office, clerical and technical employees and sales staff.

64. The issue of whether the certificate was gained by fraud will be determined after a hearing for the purpose of the presentation of evidence on that issue, to be scheduled by the Registrar as soon as possible in consultation with the parties. This is not an undertaking that the matter will be scheduled on consent, but only an indication that the Board will canvass the parties before fixing a date.

65. Finally, we find no denial of Charter rights in the fact that the Board provided notices and ballots in English and French, and not in the other languages of this workplace.

**DECISION OF BOARD MEMBER, R. W. PIRRIE:** February 14, 1997

1. As noted at paragraph 7, this is a majority decision with respect to "The 40% Issue". I respectfully dissent from all of the reasoning in this and other Board decisions with regard to this



subject. In as much as the majority's position is rooted in *The City of Toronto* case, I can do no better than refer readers to the very able dissent in that case written by Board Member Judith Rundle.

2. For the reasons set out above, I concur with the decision with respect to "The Charter Issue". I also agree that the company has an arguable case with respect to "The Fraud Issue" and that that matter should be heard.

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**0092-96-R; 0158-96-R; 0374-96-R; 0375-96-U; 1756-96-R** London and District Service Workers Union, Local 220, Applicant v. **Rogers Cantel Paging Inc.**, Responding Party; Communications, Energy & Paperworkers Union of Canada, Applicant v. Rogers Cantel Paging Inc. and MacLean Hunter Communications Inc. and AAS Telecommunications Services Limited and Cross Connect Communications and Services, Responding Parties; London and District Service Workers Union, Local 220, Applicant v. AAS Telecommunications Services Ltd., Answer North America, Cross Connect Communications Services Limited, Active Answering Services, Norman Rhora, Responding Parties; London and District Service Workers Union, Local 220, Applicant v. Rogers Cantel and AAS Telecommunications Services Ltd., Answer North America, Cross Connect Communications Systems Limited, Active Answering Services, Norman Rhora, Responding Parties; Communications, Energy & Paperworkers Union of Canada, Applicant v. AAS Telecommunications Services Limited, Cross Connect Communications and Services, Cross Connect Communications Service Limited, 1165455 Ontario Inc. c.o.b. as Active Answering Service, Answer North America, Norman Rhora, Responding Parties

**Constitutional Law - Sale of a Business - Board holding that it is without jurisdiction to consider sale of a business application where there has been sale of part of business from federally regulated undertaking to provincially regulated undertaking - Applications dismissed**

**BEFORE:** *Timothy W. Sargeant*, Vice-Chair, and Board Members *W. H. Wightman* and *P. R. Seville*.

**APPEARANCES:** *Sean Fitzpatrick* for Communications Energy & Paperworkers Union of Canada; *Jim Renaud* for London & District Service Workers Union, Local 220; *David Ivey* for Active Answering Services; *Alison E. Renton* for Rogers Cantel Paging Inc., *Norm Rhora* for AAS Telecommunications Services Ltd.

**DECISION OF THE BOARD;** February 3, 1997

1. These files were consolidated to be heard together before a panel. A preliminary issue was raised as the jurisdiction of the Board to hear these matters. The panel heard evidence on the preliminary issue on September 25, 26 and 27. The panel reconvened on December 16, 1996, to complete the evidence on this issue and to hear argument.

2. There are five applications before this panel, arising out of purported sale of a business from the respondent, Rogers Cantel Mobile Inc. ("Rogers") to the respondent AAS Telecommunications Services Limited ("AAS").

3. As a preliminary objection, Rogers takes the position that this Board has no jurisdiction under section 69 as this was a sale from a federal undertaking.
4. The Board heard from one witness, Mr. Mark Wilson, Manager of Human Resources for Rogers. Essentially for the purposes of the preliminary decision the facts were not in dispute.
5. The purported sale dealt with two locations of Rogers, one at London which is organized by the Communications, Energy & Paperworkers Union of Canada (CEP) and the other at Sarnia which is organized by the London and District Service Workers Union, Local 220 (Local 220).
6. Concerning the London operation, the Ontario Labour Relations Board had certified the Communications Workers of Canada on November 24, 1981 as the bargaining agent for employees of Business Answering Services of London Limited for both a full-time and part-time unit. MacLean Hunter Communications Inc. (MacLean Hunter) purchased the business in 1989 and became the successor employer at that time. MacLean Hunter subsequently sold this operation on March 31, 1994 to Rogers. Rogers sold to AAS according to the documents filed on March 1, 1996.
7. In 1992, the Communication Workers of Canada had merged with several other unions to form the Communications, Energy and Paperworkers Union of Canada. This union had been recognized as a successor by MacLean Hunter in the various collective agreements that it had negotiated with the union.
8. When Rogers purchased MacLean Hunter on or about March 31, 1994, it took the position that the London operation was under federal jurisdiction. Consequently, the Canada Labour Relations Board certified the applicant union on July 20, 1995, as the bargaining agent for the employees of Rogers at the London, Ontario, location and a certificate was subsequently issued. Rogers had entered into a collective agreement with CEO effective March 23, 1994 to March 22, 1997 (signed on February 22, 1996).
9. At the Sarnia location, for the full time unit, Local 220, was certified on July 16, 1975, by the Ontario Labour Relations Board for a company known as Telephone Answering Service of Sarnia Limited. Local 220 subsequently obtained a certificate in October 1975 for the part-time unit. Telephone Answering Service was purchased by MacLean Hunter in the late 1980's and subsequently purchased by Rogers in 1994. Subsequently, Rogers sold to AAS on March 1, 1996.
10. In this location the bargaining unit had never been certified by the Canada Labour Relations Board but remained certified by this Board. Local 220 and Rogers are party to a collective agreement effective June 1, 1994 to May 31, 1996.
11. There is no dispute by any party that Rogers is a federally incorporated company and is governed by federal jurisdiction. There is further no dispute that in the licensing of the airways used for their paging operation Rogers is governed by federal licensing regulations and federal licensing boards. Furthermore, there is no dispute for the purposes of this preliminary decision only, that AAS is a provincially incorporated company and purchased the Sarnia and London Answering Service operations from Rogers on March 1, 1996.
12. It is clear from the evidence both from the filed material and from the testimony of Mr. Wilson that when MacLean Hunter bought the answering services in both locations the operations were expanded to cover both a paging service as well as an answering service. Mr. Wilson testified the business as run by MacLean Hunter and Cantel included both components. Mr. Wilson testified that at both locations the services (answering and paging) were fully integrated. At both locations the bargaining unit operators were expected and did provide both types of services. Though Mr. Wilson

testified that there was some difference in the London and Sarnia operation in terms of equipment used, basically the operation was run in the same fashion. Much of his testimony concerned the different types of answering and paging services that were provided. What is important from his testimony is that the use of Hertzian waves were necessary to the paging operation. The use of such waves is licensed under federal jurisdiction. Further, it is clear from the evidence that when Rogers took over the paging aspect of the operation, there were three possible levels of paging service available to a customer; local, regional or national. The difference between the operation in London and the operation in Sarnia, was as stated before, in the equipment used. Thus there was a more technicality advanced system used in the London operation so that a message could be received and sent out on the same terminal. In contrast at the Sarnia operation, the message would be received on one terminal and then sent out on another terminal. However, in both operations all operators were required to perform both aspects of the operation, answering and paging. Both the Sarnia and London operation required the use of Hertzian waves. Mr. Wilson testified that these wave lengths cross borders and are governed by the CRTC and subject to the Radio Broadcasting Act and the Radio Communications Act.

13. In the sale to AAS, the paging networks were retained by Rogers and what was basically sold was the answering services. The purchase and sale agreement specifically excludes the paging networks. It was conceded that though not all customers used paging services, there were certainly a number of the customers that did avail themselves of such services. The answering and paging services were billed separately and contracted on separate document agreements. According to the evidence, it was evident that most of the operating duties would not involve the use of Hertzian waves but nevertheless the paging aspect was still part of the integrated service provided by Rogers. It was conceded that the operators' duties would not materially change with the switch to AAS. Further on cross-examination Mr. Wilson acknowledged that CRTC required a licence for paging and for the channels for the pagers, but did not require a licence for the answering service. In addition, Mr. Wilson agreed on cross-examination that the operators only connection to paging was to dispatch the page when called upon to do so.

14. It was the position of counsel for Rogers that this Board had no jurisdiction because Rogers was a federally regulated company. In counsel's submission although the Sarnia operation was not certified federally it is quite clear on the evidence that it is a federal undertaking. In London it is even clearer given that there is a federal certificate granted. Counsel submitted that because of the changes brought on by MacLean Hunter in adding the paging component which Rogers maintained, the operation obviously became a federally regulated undertaking. Counsel submitted that the case law supported her position that the work in issue falls within federal jurisdiction not provincial. This case law would, in counsel's submission, also apply to AAS. Alternatively, even if AAS is not considered as a federally regulated company, nevertheless this Board is still without jurisdiction under section 69 in that it was still a sale from a federally regulated company to a provincially regulated company.

15. Counsel for C.E.P. on the other hand takes the position that the underlying certification of the Ontario Labour Relations Board for the answering service was not extinguished by the purchase by MacLean Hunter and/or Rogers, but that such bargaining rights still existed and attached once a sale was made to a provincially regulated company, (as in this instance from Rogers to AAS.) In counsel's submission there is no evidence presented that can possibly lead the Board to the conclusion that AAS is a federally regulated company and therefore once the sale was made the underlying bargaining rights as certified by this Board operate to give this Board jurisdiction to consider the sale under section 69. As an alternative, counsel argues that in any event the paging business is severable from the answering service business and as such the provincial jurisdiction remained at all times attached to the answering service. Thus on the sale to AAS section 69 would apply to the sale of the provincial part of that business. Clearly since the business could be severed in a sale, this was the best evidence that the business was not an integrated business but rather a business that had severable operations. What



remained with Rogers in counsel's submission was the federally regulated business whereas the provincially regulated business was sold.

16. Counsel for Local 220 adopted the above rationale but pointed out that in Sarnia operation that union had never been federally certified but had remained as a provincially certified union. In that sense although counsel did not argue waiver, it was obvious that a provincial business was sold to AAS. Thus counsel submitted that this Board had jurisdiction under section 69 to that part of the business had been transferred to AAS by Rogers.

17. It should be pointed out that counsel for Rogers referred the Board to an earlier provision under Bill 40, were the predecessor to what is now section 69. Under Bill 40, this Board had been given specific jurisdiction to consider a sale from a federal regulated company to a provincial regulated company. Under Bill 7 this aspect of Bill 40 had been repealed and is no longer a part of the Act.

18. For the purposes of this decision the Board is not convinced that any evidence has been led that would lead it to conclude that AAS is a federally regulated company. For the purposes of this preliminary ruling, the Board will assume that AAS is governed by provincial jurisdiction.

19. The Board, however, is not persuaded that the paging and answering services were not run as an integral business by Rogers when they operated the business both at the Sarnia and London operations. It is clear from the evidence, which is not disputed, that the paging answering and paging services were run as an integrated business. Further the operators participated in both aspects of this business i.e. participated both in the answering service and in the paging business. Though the business may be severed for purposes of sale this does not mean that it was not run as an integrated system by Rogers. Further, in the Board's view, Rogers is a federally regulated company with a federally regulated business.

20. Thus, for the purposes of this decision, the Board will consider that there has been a sale of part of the business from a federally regulated undertaking to a provincially regulated undertaking. In these circumstances, does the Board have jurisdiction to consider this sale under section 69 of the Act?

21. In the Board's opinion it does not have such jurisdiction. There has been no case that the Board has found or been referred to (excluding specific legislation passed under Bill 40) where the Board has assumed jurisdiction under section 69 or its predecessors on a sale of a business from an integrated federally controlled company to a provincially regulated controlled company. Though the argument of the counsel for the union is intriguing that the rights still attach (an analogy being drawn to the bankruptcy cases), the Board is not convinced that this proposition can be supported in a sale from federally regulated company to a provincially regulated company. In this matter, the Board adopts the reasoning found in its earlier decision of *London and District Service Workers' Union, Local 220 Applicant v. MacLean-Hunter Communications*, [1980] OLRB Rep. Apr. 466. This case concerned an application for certification. The union in that case had argued that the respondent was subject to provincial not federal jurisdiction because none of the business extended beyond provincial boundaries. (In the case before this panel, it is to be remembered that there was evidence that some of the paging services did extend beyond provincial boundaries). This case like the situation before us, involved a paging and answering service operation. It is quite clear from that decision that the operators received a message in the London office and then sent it over the wires in appropriate form to a transmitter outside the city. As the Board found "On receipt by the transmitter, Hertzian waves are emitted to carry the message to the appropriate source. Hertzian waves are also the means by which mobile communication service is provided." The Board in a lengthy decision considered whether it had jurisdiction and determined in that instance that it did not have jurisdiction to consider an application for certification. The Board is making this decision referred to *Tasco Telecommunication Answering Service Exchange Limited* [1977] 1 C.L.R.B. 273. In the Tasco decision the Federal Labour Relations Board had refused

to sever “the telephone answering service aspect of Tasco’s business for constitutional purposes”. This Board in the MacLean Hunter decision, relying on the Tasco decision determined that:

Accordingly, on the basis of the well established judicial authority relating to radio communication, the Board finds that it lacks jurisdiction to entertain the application in question. The essence of MacLean Hunter’s paging and mobile communication services is radio communication by Hertzian waves and thus is appropriately classified as such for the purpose of determining constitutional jurisdiction. Notwithstanding the fact that the radio waves are both emitted and received in Ontario, the Board concludes that the enterprise falls to federal jurisdiction pursuant to either the combined operation of section 91(29) and 92(10)(a) of *The British North America Act* as constituting an undertaking which extends beyond the province or pursuant to the federal government’s powers to make laws for the peace, order and good government of Canada, or both.

22. Reference may also be made of this Board in *Canadian Telecommunications Group*, [1985] OLRB Rep. Feb. 182. In that case the employer was engaged in the business of selling, installing and maintaining telephone telecommunications systems. The issue was whether this was an integral part of Bell’s federal undertaking and subject to federal regulatory authority. In that situation, a separate company CTG sold, installed and maintained the telephone telecommunication systems. It did not manufacture such equipment. There was no dispute that Bell was a federally regulated telecommunications common carrier. In the circumstances the Board determined that CTG activities did not make it functionally an integrated part of the Bell Telephone network but that it was:

in the same position as various brokers, intermediaries agents and independent producers with which the courts were concerned.

In *Paul L’Anglais Inc.*, *Cottrell*, *Cannett*, *Wardair* and the other cases reviewed earlier, CTG and the services it performs simply do not have the same relationship to the core federal activity here as the services of the stevedores did to the core undertaking in the *Stevedoring* case *supra*” (paragraph 53).

The Board therefore concluded that CTG was bound by provincial jurisdiction.

23. Though both cases can be distinguished on their facts, the MacLean Hunter Communications decision falls more squarely within the facts before this panel. This Board has concluded that unlike the Canadian Telecommunications Group case, there is an integrated business that Cantel was operating concerning its answering and paging service. In these circumstances, there were not two separate companies operating two separate parts of the business but one fully integrated service being provided to customers. This rationale is supported from the cases quoted in the *Canadian Telecommunications Group* decision, especially the Federal Court of Appeal decision in *Canadian Airlines Employees Association v. Wardair Canada*. In the *Canadian Telecommunications Group* decision, the Board quotes extensively from that decision at paragraph 30 where the Court sets out what problems may arise when considering in which labour relations jurisdiction a particular employer may fall.

“A particular activity may be reasonably incidental to the operation of a federal work, undertaking or business without being an essential component of such operation. For example, an interprovincial railway may have its own laundry facilities or its own arrangement for preparing food for passengers, or, alternatively, it may send its dirty linen to an outside laundry or buy prepared food. Generally speaking, where such an activity is carried on by the operator of the federal work, undertaking or business as an integral part thereof, it is indeed a part of the operation of the federal work, undertaking or business. Where, however, the operator of the federal work, undertaking or business carries on the operation thereof by paying ordinary local businessmen for performing such services or for supplying such commodities, the business of the person performing the service or preparing the commodities does not thereby automatically become transformed into a business subject to federal regulation”.

Based on this test it is quite clear that the activity that was carried on by Rogers in both the London and Sarnia operation was an integral part of the business it provided to its customers. The Court concluded in the *Wardair* decision:

“where something is done as an integral part of an operation of a federal work, undertaking or business and that something is *reasonably incidental* to such operation, it may be regulated by Parliament as part of the regulation of that work, undertaking or business even though it is not *essential* to the operation of such work, undertaking or business; but where such a thing is made the subject of a separate local business or businesses, it cannot be regulated by Parliament merely because, if it were done as an integral part of operating a federal work, undertaking or business, it could, as such, be regulated by Parliament.

24. In the case before this panel there was not a separate business being operated at the time Rogers sold part of its business to AAS. The paging operation was reasonably incidental and integral to the total service being provided by Rogers. Thus the Board finds that there was a sale of a part of federally regulated operation to a provincially operated company.

25. Based on the above it is the Board’s conclusion that it has no jurisdiction under section 69 to proceed further with this matter.

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**2825-96-R Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, Applicant v. Small Fry Snack Foods Inc., Responding Party**

**Certification - Representation Vote - Employer asking Board to direct new vote on ground that two employees did not receive notice of the hours that the vote was held and were therefore deprived of opportunity to cast ballot - Employer submitting that the two employees believed that the polls would be open from 5:30 a.m. to 7:30 a.m. (on the basis that the employer had agreed with the union’s proposal to have the vote during those hours) whereas the poll was open only until 7:00 a.m. - Employer submitting that Notice of Vote setting out time of vote had been posted on morning of work day prior to the vote, but after the two employees had left the facility - Board finding that sufficient notice of the vote given and that employees who relied on parties’ agreement regarding hours of the vote did so in disregard of Board’s instructions set out in Notice of Application posted in workplace - Board not ordering new vote - Certificate issuing**

**BEFORE:** *Laura Trachuk*, Vice-Chair.

**APPEARANCES:** *Mike McCreary* and *John Malcolm* for the applicant; *E. J. Bennett*, *D. Hiscocks*, *P. Decarie* and *George Maxwell* for the responding party.

**DECISION OF THE BOARD;** January 24, 1997

1. This is an application for certification. A representation vote was held on December 9, 1996. The responding party (hereafter referred to as “the company”) requested that a new vote should be held on the basis that two employees who wished to vote did not receive notice of the hours the vote was to be held and were therefore deprived of the opportunity to cast a ballot. The Board denied the company’s request for a new vote and directed that a certificate be issued to the applicant (hereafter referred to as “the union”) in a “bottom line” decision dated January 20, 1997. The following are the reasons for that decision.



### **The Facts**

2. The Board and the parties agreed that submissions should be presented with respect to this issue on the basis of the “best case” for the company without calling any *viva voce* evidence. This decision is therefore based on the assumption that the following facts are true.

3. In its application received by the Board on December 2, 1997, the union requested that a representation vote be held within five days and during the hours of 5:30 a.m. to 7:30 a.m. In its response to the application, the company agreed with the hours for the vote proposed by the union.

4. The Board’s decision and Notice of Vote and Hearing were received by the company after business hours on Thursday, December 5. The Board’s Notice of Vote and Hearing (Form T-5) indicated that the vote would take place at three separate locations from 5:45 a.m. to 7:00 a.m. on Monday, December 9. The company posted the Notice (Form T-5) and the decision sometime on the morning of Friday, December 6. However, two employees had already left for their duties away from the facility by the time of the posting. They did not return to the workplace and were not expected to return until the morning of Monday, December 9, the day of the vote.

5. On the basis of the requested hours for the vote stated in the application and agreed to in the response, the two employees believed that the polls would be open from 5:30 a.m. to 7:30 a.m. The Board does not require that a response to an application for certification be posted, so it is unclear how the employees learned the information contained in the response. However, for the purposes of this argument, it was accepted that the parties’ agreement on the proposed hours for the vote had come to the employees’ attention and that they relied upon it.

6. The two employees arrived at the workplace to vote on Monday, December 9 at 7:10 a.m. and found that the Board’s Returning Officer had already closed the poll and departed.

7. Seventeen out of the twenty-one employees on the voters’ list for this bargaining unit cast ballots. It is possible that two additional ballots might have meant a different result when the ballots were counted. No employees have made submissions to the Board complaining that they have not had an opportunity to vote.

### **Submissions of the Parties**

8. The company argues that it is entitled to have its employees’ wishes with respect to union representation canvassed in a fair and reasonable way. In this case the company claims that two of its employees reasonably relied on the parties’ agreement as to when the vote should be held and as a result of the Board’s procedures, were not given any notice that the voting hours would not be those agreed to. The company submits that the Board’s procedures have caused this unfairness in two ways: the Board’s Notice and its decision were not received until after business hours on Thursday and could not therefore be posted before the employees left the facility for work on Friday morning. Furthermore, neither the decision nor the Notice directed attention to the fact that the hours for the vote were not the same as those agreed to by the parties. The two employees have therefore been deprived of the opportunity to cast a ballot through no fault of their own and a new vote should therefore be held.

9. The union argues that the company has no standing to raise this matter and that it could only be raised by an affected employee. As no employee has come forward with this concern, the company’s objection should be denied. The applicant argued further that it was the company’s own actions that led to the problem as it should have ensured that the decision and Notice of Vote and of Hearing were posted on Friday morning before the employees left the facility. The union submitted that there was nothing wrong with the Board’s procedure in this case. In every case there are some employees who do

not manage to vote and the Board should note that seventeen employees out of twenty-one did vote in this case. The union relied on the Board's decision in *P.H. Atlantic Plumbing & Heating Division of 629629 Ontario Limited*, [1991] OLRB Rep. Jan. 97.

### **Decision of the Board**

10. The Board decided not to order a new vote in the circumstances as there was sufficient notice to the employees. In making this decision, the Board has taken into account that no employee has come forward and complained that he or she was deprived of the opportunity to vote. In the Notice of Application (Form T-2), as well as the Notice of Vote and Hearing (Form T-5) and the Notice of Report of Board Officer (Form T-36), employees are advised that if they wish to say something about the application they should file submissions with the Board.

11. The Board has also considered the Act's certification scheme in reaching its conclusion. The *Labour Relations Act, 1995* requires the Board to hold a vote within five days of an application for certification being received, where possible. In that time frame an application must be served and filed, a response must be served and filed, the Board must review the materials and issue a decision ordering a vote. Administrative and sometimes adjudicative decisions and arrangements must be made as to where and at what times the vote will be held. As a result of these time frames, it is not uncommon for the Board's Notice of Vote and of Hearing to be posted only one day, in this case one working day, prior to the vote. The employees are, however, given notice that a vote is pending because the Notice of Application (Form T-2), as well as the application must both be posted. The Board's Notice of Application indicates that a vote will normally be held within five days of the application date. The employees, however, are not given notice of the actual date and time and place of the vote until the Board's Notice of Vote and Hearing is posted and are expected to keep themselves informed as to when that posting occurs and the information it contains. Nothing is considered final until the Board's decision and the Notice of Vote are issued to the parties. Employees are specifically advised that all final information regarding the vote will be provided to them by way of posted notice one or two days before the vote in the Notice of Application which states as follows:

#### VOTE ARRANGEMENTS

The Board will consider the bargaining units proposed by the applicant and the employer and will then determine the voting constituency, which is the group of employees who will vote.

The Board will also consider the requests of the union and the employer as to where and when the vote should be held.

In the next few days, the Board will direct your employer to post a "Notice of Vote and of Hearing" beside this notice, setting out the date and time of the vote, the location(s) of the polling place(s), and the voting constituency.

Normally, the vote will be held five (5) days (not counting weekends and holidays on which the Board is closed) after the application for certification is filed with the Board. You should expect the Notice of Vote to be posted one or two days prior to the date of the vote.

TO ENSURE THAT YOU ARE INFORMED OF THE VOTE ARRANGEMENTS, YOU SHOULD CHECK THIS SPACE REGULARLY FOR FURTHER POSTINGS.

[emphasis in original]

12. In this case the company argues that the employees relied on the parties' agreement that the hours of the vote would be from 5:30 a.m. to 7:30 a.m. There is no reason why that should be the case. The Board asks the applicant to *propose* hours for the vote and the responding party to agree or to *propose* alternative ones. There is nothing in the application or response or the Board's Notice of

Application that asserts that the polling hours will be those proposed. In fact, the Notice of Application says only that they will be considered and the time of the vote posted at a later date. The Board does try to accommodate the parties' proposals but is constrained by administrative concerns, including the availability of Officers to conduct the vote. The Board's Officers may have to conduct several votes in one day and the Board will take into account, among other things, how many people are expected to vote at a poll in order to determine how long it should be open. The Information Bulletin #2 "Instructions Regarding the Making of Vote Arrangements" provided to the parties in a certification application states as follows:

If the parties agree on vote arrangements, the Board will typically attempt to accommodate the proposals made by the parties. However, if in the Board's view the arrangements will be too costly or do not adequately allow employees the opportunity to vote, the Board may set the date(s), time(s) and location(s) of the vote without regard to the parties' agreement.

• • •

**HOURS OF VOTE:** In proposing the hours for the vote the parties must seek to balance the need for an economical use of the Board's resources and the general rule that hours of the vote should be arranged so that most employees have the opportunity to vote during regular working hours.

Generally, not more than one hour should be allowed for each sixty (60) eligible voters. ...

In this case, thirty-five to thirty-eight employees in the originally proposed bargaining unit were expected to vote at three separate locations. The Board considered it appropriate to hold the vote within the hours proposed by the parties but not for the full two-hour period. That decision was reasonable in these circumstances.

13. In *B & B Electric Co.*, (decision of the Board dated December 4, 1996, unreported) [now reported at [1996] OLRB Rep. Nov./Dec. 907], the Board had occasion to comment on the expectation that all employees receive actual notice of a representation vote as follows:

24. It should surprise no one that each and every person who might possibly be affected does not receive actual notice of each and every application for certification, or of each and every representation vote which is held, in a timely way. The Board, relying as it must on the trade union and employer involved in an application for certification to do the things which they are obliged by statute or directed by the Board to do, does what it can to bring the application and proceedings in it to the attention of the person who may be affected. However, it is readily apparent that time is of the essence and the "quick vote in every case" certification system established under the Act (see *Burns International Security Services Limited*, [1996] OLRB Rep. April 192; *The Corporation of the City of Toronto*, (Board File No. 2603-95-R, decision dated July 3, 1996, to be reported at [1996] OLRB Rep. for July/Aug.) and it is inevitable that not every person affected will receive actual notice in every application for certification. There are any number of reasons why affected persons, generally employees, may not receive actual notice. For example, it is entirely normal, particularly in the construction industry, for persons to be absent from the workplace for vacations, medical reasons, or for other reasons. No workable certification system can guarantee that everyone affected by an application for certification will receive actual notice of the application. This is particularly true in a fast vote in every case system like the one the Board is charged with administering under the Act.

25. Further, this is no different from other situations in which notice is given in a manner which does not include personal service and which therefore cannot guarantee actual notice to persons whose rights may be affected. For example, various kinds of legal notices are routinely published in newspapers, and in the Ontario Reports (which are not widely read by persons who are not legal professionals). More to the point, actual personal notice is not necessarily given to everyone who may be entitled to vote in Municipal, Provincial, Federal or other elections.



14. This Vice-Chair agrees with the above comments and found that sufficient notice of the vote was provided in this case. Seventeen out of twenty-one employees in the bargaining unit finally agreed to by the parties did vote. The two employees who relied on the parties' agreement with respect to the proposed voting hours did so at their own peril and in disregard of the Board's own instructions set out in its Notice of Application. The Board at no point held out that it was bound in any way by the proposed hours. The employees knew a vote would be held on or after December 6 by the Board's notices and it was incumbent on them to keep themselves informed as seventeen of them appear to have done. And again the Board notes that it is the employer, not the employees, who asserts that an unfairness occurred in these circumstances. For all of the above reasons, the Board declined to order a new vote and directed that a certificate be issued to the applicant.

15. In its decision dated January 20 the Board should have explained for the benefit of the employees that the parties agreed on the bargaining unit outlined in that decision after the vote.

16. The responding party employer is directed to post copies of this decision immediately adjacent to the Board's decision of January 20.

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### **3337-96-R International Brotherhood of Electrical Workers, Local 353, Applicant v. Speed Electric Limited, Responding Party**

**Certification - Construction Industry - Employee - IBEW applying to represent bargaining unit of electricians - Board determining that individuals holding "Pending Provisional C of Q" certificate from Ministry of Education who were at work of the date of application doing bargaining unit work eligible to vote in representation vote**

**BEFORE:** *Jules B. Bloch*, Vice-Chair, and Board Members *W. N. Fraser* and *G. McMenemy*.

#### **DECISION OF THE BOARD;** February 13, 1997

1. This is an application for certification filed under the construction industry provisions of the *Labour Relations Act, 1995* ("the Act").

2. A vote was held on January 27, 1997, the ballots were segregated and the ballot box was sealed.

3. An issue arose at the Labour Relations Officer's meeting in respect of a Form called "Pending Provisional C of Q". In the construction industry and in particular for the certified trades like electricians the voting list and the members of the bargaining unit are made up of individuals who hold certificates of qualification in a particular certified trade.

4. In this case, certain of the individuals on the employer's list are in possession of a certificate from the Ministry of Education and Training referred to as a "Pending Provisional C of Q". On its face, the certificate, in part, states the following:

The above named is authorized to work in the trade indicated pending issuance of a Provisional Certificate of Qualification, or for a maximum of 30 days.

The Provisional Certificate permits the applicant to work in the trade indicated until the noted Expiry Date, at which time an examination for Certificate of Qualification will be given.

Applicant: Please inform the employer upon receipt of Provisional Certificate.

5. As well, the file contains a letter dated January 31, 1997 from the Workplace Support Services Branch to Mr. Ron Zakkal the employer, which is reproduced below:

Workplace Support Services Branch  
Apprenticeship and Client Services  
1-625 Church Street  
Toronto Ontario  
M4Y 2E8

January 31, 1997

Dear Mr. Ron Zakkal:

Re: Abdurahman Mete

In response to your inquiry regarding trade certification of Mr. Mete as a Domestic and Rural Electrician (309C), this is to advise you Mr. Mete is not a registered apprentice, and he does not hold a Certificate of Qualification as an Electrician.

Yours truly,

("Elaine Forde")  
Elaine Forde

6. In our view, the certificate, on its face, indicates that the holder of the certificate is entitled to work at the trade for a certain period of time, in this case for a period not to exceed thirty days.
7. In our view, the Board accepts the certificates as proof that the employee in question is qualified to work at the trade, in this case the electrical trade, during the time frame allowed by the certificate and consequently is entitled to be placed on the employee list for the purpose of who was at work on the application date.
8. The C of Q regime is administered by the Ministry of Education and Training and the Board accepts their certificates as proof of the status of any individual.
9. In respect of this case all those at work on the date of application doing bargaining unit work and hold these type of certificates would be entitled to be on the voting list and in the voting constituency for the purpose of this certification.

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**3412-96-R Canadian Union of Public Employees, Applicant v. Sudbury and District Health Unit, Responding Party**

**Certification - Evidence - Membership Evidence - Board holding that it may properly have regard to membership evidence in the form of combination cards which were signed between six months and one year prior to application date - Board directing representation vote**

**BEFORE:** *Kevin Whitaker*, Vice-Chair, and Board Members *J. A. Rundle* and *H. Peacock*.

**DECISION OF KEVIN WHITAKER, VICE-CHAIR, AND BOARD MEMBER H. PEACOCK;**  
January 30, 1997

1. This is an application for certification.

2. The Board finds that the applicant is a trade union within the meaning of section 1(1) of the *Labour Relations Act, 1995*.

3. Most of the membership evidence relied upon by the applicant consists of “combination” application for membership/membership cards which were signed more than six months but less than one year, prior to the application date. Four such cards relied upon by the applicant were signed more than one year prior to the application. The Board’s practice in dealing with the timeliness of membership evidence was set out in *Charterways Transportation Limited*, [1979] OLRB Rep. Nov. 1068:

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5. The membership evidence filed by the applicant indicates that the last monetary payment to the applicant by any employee in the bargaining unit was made in January of 1979, that is more than six months but less than a year prior to the application date. The Board’s long standing practice in such situations is to exercise its discretion under section 7(2) of the Act and direct the taking of a representation vote. See: *W.N. Construction (Ottawa) Ltd.*, [1986] OLRB Rep. Sept. 645. We are not satisfied that the circumstances of this case warrant a departure from this practice.

• • •

4. Given the statutory changes in the Act as a result of Bill 7 and the Board’s practice, in our view the Board may properly have regard to membership evidence in the form of “combination” cards which were signed between six months and one year prior to the date of application.

5. It appears to the Board on an examination of the evidence before it, without considering those “combination” cards relied upon by the applicant which were signed more than one year prior to the application date, that not less than forty per cent of the individuals in the bargaining unit proposed in the application for certification were members of the union at the time the application was made. Having regard to our findings in this respect, it is not necessary to determine if the applicant could, in these circumstances, rely upon the “combination” cards signed more than one year prior to the application date.

6. The Board directs that a representation vote be taken of the individuals in the following voting constituency:

all employees of the Sudbury and District Health Unit employed in Home Care, save and except Home Care Supervisor, persons above the rank of Home Care Supervisor, and persons for whom a trade union held bargaining rights on the date of application.

7. The vote will be held on Friday, January 31, 1997. Other vote arrangements will be as determined by the Registrar and set out on the attached “Notice of Vote and of Hearing”.

8. All individuals who had an employment relationship with the responding party in the voting constituency on January 24, 1997, the certification application filing date, are eligible to vote. Employees having an employment relationship on January 24, 1997, the certification application filing date, include employees who were not at work on that date, so long as there is a reasonable expectation of their return to employment.

9. There is a dispute between the parties as to whether or not employees who are employed for less than twenty-four (24) hours per week, or as students employed during the school vacation period, should be included in the bargaining unit. If any individual holding such a position wishes to cast a ballot, the individual shall identify himself or herself as occupying a disputed position and such individual shall then be entitled to cast a ballot. Any ballot cast by such an individual shall be segregated and not counted until the Board so orders or the parties agree.



10. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the responding party.

11. The responding party is directed to post copies of this decision and of the "Notice of Vote and of Hearing" adjacent to each of the posted copies of the "Notice to Employees of Application for Certification". These copies must remain posted for 30 days.

12. Any party or person who wishes to make representations to the Board about any issue remaining in dispute which relates to the application for certification, including any matters relating to the representation vote, must file a detailed statement of representations with the Board and deliver it to the other parties, so that it is received by the Board within seven days (excluding Saturdays, Sundays and holidays on which the Board is closed) of the date on which the vote is taken.

13. The matter is referred to the Registrar.

**DECISION OF BOARD MEMBER J. A. RUNDLE:** January 30, 1997

I dissent. I would have dealt with the application in the manner described in my dissent in the *Corporation of the City of Toronto*, [1996] OLRB Rep. July/Aug. 552. I reserve my decision on the issue of the timeliness of the membership evidence in this case.

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**0387-96-R; 0453-96-U United Steelworkers of America, Applicant v. Wal-Mart Canada, Inc., Responding Party**

**Certification - Certification Where Act Contravened - Representation Vote - Board concluding that conduct of employer in circulating amongst employees and engaging them in individual and group discussions regarding the union violating section 70 of the Act - Employer's refusal to answer questions regarding closing of store if union certified amounting to intentionally generated implied threat to employees' job security and also violating the Act - Board concluding that results of representation vote not disclosing employees' true wishes, that no remedy short of automatic certification sufficient to counter effect of employer contraventions, and that union holding membership support sufficient for collective bargaining - Union certified under section 11 of the Act**

**BEFORE:** Janice Johnston, Vice-Chair, and Board Members R. W. Pirrie and H. Peacock.

**APPEARANCES:** Marie Kelly, David Doorey, Jeff Peltier and Shaheen Hirani for the applicant; Steven McCormack, Robert Wasserman, Paul Hayward, Paul Ratzlaff and Kerry Jameson for the responding party.

**DECISION OF JANICE JOHNSTON, VICE-CHAIR, AND BOARD MEMBER H. PEACOCK:**  
February 10, 1997

1. File No. 0387-96-R is an application for certification in which a representation vote was conducted on May 9, 1996. File No. 0453-96-U is an application pursuant to section 96 of the *Labour Relations Act, 1995* (the "Act") alleging violations of section 70, 72, 76 and 86 of the Act. In addition, the applicant, the United Steelworkers of America (the "Union") has asked that the Board certify it pursuant to section 11 of the Act. The union asserts that due to the conduct of the responding party, Wal-Mart Canada Inc. (the "Company" or "Wal-Mart"), the results of the representation vote do not

reflect the true wishes of the employees on the issue of union representation. While the union has asserted numerous breaches of the Act by the company, the key allegation in the union's view is that the company raised issues of economic and job security with the employees and then refused to answer questions asked on these matters. In the union's view, the company's failure to answer the question "will the store close if the union is successful" led the employees to conclude that the store would in fact close if the union was successful. Therefore, the union requests that the Board set aside the vote and certify the union pursuant to section 11 of the Act.

2. For the reasons which follow, we have concluded that it is appropriate to certify the union pursuant to section 11 of the Act.

3. At the conclusion of the hearing both parties requested that the Board issue a "bottom line" decision with written reasons to follow. Given the nature of this case, we have determined (and upon this the panel is unanimous) that it is appropriate to issue the following decision with abbreviated reasons. Having considered all of the evidence and the submissions of counsel, we have determined that it is not necessary nor is it appropriate to provide reasons on or deal with all of the issues in dispute. We have decided upon this approach for several reasons. Firstly, this hearing was extremely lengthy consuming thirty-five days and lasting from June 3, 1996 to December 19, 1996. While the delays were largely unavoidable, we feel it would be inappropriate to delay the resolution of this matter any longer than is absolutely necessary. If we were to provide our conclusions on all of the disputed matters, the delay could be significant.

4. We are also of the view that it is not appropriate to deal with all of the matters in dispute because to do so would not be in the best interests of the parties or the employees. The union has alleged that numerous actions or behaviours engaged in by the employer constitute violations of the Act. The evidence called by the parties on many of these matters is contradictory. The Board, in providing reasons with regard to these issues, would be required to make numerous credibility calls. The hearing made it abundantly clear that there are two significantly polarized groups of employees in this workplace, those in favour of the union and those opposed to the union. Were we to make the credibility calls necessary to decide all of the issues in dispute, this could further polarize the employees and would unquestionably not assist the union and the employer in the new relationship upon which they are embarking as a result of this decision. It is not in the interests of positive long term labour relations to put all of the events in this workplace leading up to the vote under a microscope and analyze them. Therefore, although we considered all of the evidence and submissions of counsel, to avoid further poisoning an already damaged relationship we will not deal with, for example: the controversy concerning the notes of Mr. Paul Ratzlaff and the impugned conduct of counsel with regard to the expert's report; the union meeting on May 8th and the events that occurred thereafter; the issues raised with regard to barbecue draws and the wearing of "pins"; the disputed aspects of Ms. Passador's speech; the letters sent to employees by the company; and the Globe and Mail article.

5. We do feel that it is appropriate to issue the abbreviated reasons that we are providing, because to simply issue a bottom line decision devoid of any reasoning would fuel the controversy that this decision will no doubt cause amongst the employees in this workplace. As is not surprising, strong views, both for and against the union are held by some of the employees in this workplace. We feel it is important that the employees and the parties have our reasons for reaching the conclusions that we did.

6. The sections of the *Labour Relations Act, 1995* relevant to this decision are as follows:

11.(1) Upon the application of a trade union, the Board may certify the trade union as the bargaining agent for the employees in a bargaining unit in the following circumstances:

1. An employer, employers' organization or person acting on behalf of an employer or employers' organization has contravened the Act.
2. The result of the contravention is that a representation vote does not or would not likely reflect the true wishes of the employees in the bargaining unit about being represented by the trade union.
3. No other remedy, including the taking of another representation vote, is sufficient to counter the effects of the contravention.
4. The trade union has membership support adequate for the purposes of collective bargaining in a bargaining unit found by the Board to be appropriate for collective bargaining.

(2) Upon the application of an interested person, the Board may dismiss an application for certification of a trade union as the bargaining agent for the employees in a bargaining unit in the following circumstances:

1. A trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions has contravened the Act.
2. The result of the contravention is that a representation vote does not or would not likely reflect the true wishes of the employees in the bargaining unit about being represented by the trade union.
3. No other remedy, including the taking of another representation vote, is sufficient to counter the effects of the contravention.

(3) The Board may consider the results of a representation vote when making a decision under this section.

(4) Subsections 10(1) and (2) do not apply with respect to a representation vote taken in the circumstances described in this section.

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**70.** No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of the employer's freedom to express views so long as the employer does not use coercion, intimidation, threats, promises or undue influence.

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**72.** No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or
- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to



cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

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76. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

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86. (1) Where notice has been given under section 16 or section 59 and no collective agreement is in operation, no employer shall, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty, of the employer, the trade union or the employees, and no trade union shall, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees,

- (a) until the Minister has appointed a conciliation officer or a mediator under this Act, and,
  - (i) seven days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator, or
  - (ii) 14 days have elapsed after the Minister has released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board,

as the case may be; or

- (b) until the right of the trade union to represent the employees has been terminated, whichever occurs first.

(2) Where a trade union has applied for certification and notice thereof from the Board has been received by the employer, the employer shall not, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer or the employees until,

- (a) the trade union has given notice under section 16, in which case subsection (1) applies; or
- (b) the application for certification by the trade union is dismissed or terminated by the Board or withdrawn by the trade union.

(3) Where notice has been given under section 59 and no collective agreement is in operation, any difference between the parties as to whether or not subsection (1) of this section was complied with may be referred to arbitration by either of the parties as if the collective agreement was still in operation and section 48 applies with necessary modifications thereto.

7. The company is what was described as a "junior" department store engaged in the selling of merchandise to the public. The store which is the subject of the application for certification is located in Windsor.

8. Wal-Mart is an American company which in January, 1994 acquired 122 of 144 stores owned and operated by Woolco in Canada, including the Windsor store which is the subject of this application. None of the 122 stores acquired were unionized although 9 of the 22 stores not acquired were unionized. Wal-Mart currently operates 2600 stores world-wide in countries such as China, Brazil,

Argentina, Mexico, Puerto Rico and the Philippines. None of these stores are unionized. Wal-Mart is currently planning further expansions and in fact has been expanding.

9. The company employs full-time and “peak” time or part-time associates. Full-time associates work from 28 to 37 hours per week and peak-time associates work from 6 to 27 hours per week. The store is open from 9:00 a.m. to 9:00 p.m. Monday to Saturday and from 11:00 a.m. to 5:00 p.m. on Sundays. The full-time employees generally work Monday to Friday on a day shift. Peak-time associates fill in hours whenever necessary. The management structure at this store consists of a Store Manager, Mr. Andy Johnston, and 6 assistant managers. There are 40 departments in the store and each one has a person in charge of that department. The department managers are not managerial in the way in which the Board defines that term and the parties have agreed that they are members of the proposed bargaining unit. Above the store manager, is a District Manager, Mr. Tino Borean, who is responsible for a total of 8 stores located in London, Windsor, Sarnia, Chatham and Goderich. The company’s head office or “home” office as it was referred to in this case, is located in Toronto. Mr. Jon Sims, the Regional Vice-President of Operations for Region 2 in Canada (Windsor being in Region 2), Mr. Paul Ratzlaff, Director of Associate Relations and Ms. Karen Duff, a Regional Personnel Officer, all work out of the home office.

10. Mr. Johnston, Mr. Sims and Mr. Ratzlaff all testified before the Board. We heard a great deal of evidence regarding the company’s practices and procedures and what was referred to as the Wal-Mart culture. Wal-Mart seeks to promote an atmosphere or “culture” in its stores which is positive and friendly, customer oriented and in which associates work together as a family or team. The company has put together an associate handbook which is given to new employees. The introductory/covering letter in this handbook articulates this approach:

Welcome to the Wal-Mart Family! When my brothers and sister and I were growing up, we always worked in Dad’s stores - sweeping floors, carrying boxes, even running the ice cream machine. I remember feeling that all the associates in the store were part of the family, always willing to pitch in and help each other. The Company has grown from just a handful of stores to over 2,000 stores today, but every day I still see examples of that “family attitude” we all shared back then. It *is* possible for a business as big as ours to keep that feeling of belonging, of working together to make a positive contribution to our communities and our country.

As we grow, one of the biggest challenges we face is “thinking small”. We all need to pay attention to the details that have made Wal-Mart such a success - keeping the aisles clean and the shelves stocked, thinking of new ways to display and merchandise items, and always giving our customers the very best service. But the most important thing we can do is to respect the talents and individuality of our fellow associates. If we do all these things, if we consider ourselves as members of a wonderful extended family, there’s no limit to what we can accomplish!

The next few years promise to be very exciting. We have expanded onto the international market and have transplanted our terrific Wal-Mart way of doing business - customer service, great values and respect for each other - to other countries. Our distribution centres, clubs and stores at home will continue to post record results, thanks to your hard work and dedication. There will be plenty of opportunities for associates to learn and grow.

Let’s get out there and do the very best we can, and take pride in the fact that we’re all members of a family that really cares... the Wal-Mart family.

Thanks for doing such a great job, always!

“Rob Walton”

Rob Walton  
Chairman, Wal-Mart Stores, Inc.

11. An extremely important facet of the Wal-Mart culture is the company's commitment to communicating with the associates, treating them as partners and empowering associates to speak up, make suggestions and ask questions. Mr. Ratzlaff testified that the associates at Wal-Mart are viewed fundamentally differently from how most companies in his experience view employees. In his view, Wal-Mart goes beyond attempting to treat the employees as partners and actually treats employees such that they see themselves as partners. The company has implemented various policies to facilitate this atmosphere of openness and communications. Two policies we heard a great deal about are the "open door" policy and the "sundown rule". The open door policy is intended to encourage employees to feel that they can approach any member of management, including home office managers, on any issue and expect an answer without fear of reprisal. The sundown rule is intended to ensure that a manager who has been asked a question responds with an answer before sundown the same day. Mr. Ratzlaff in explaining the company's approach to its employees describes associates as having two rights. The first right was referred to as "a right of access" and was described by him as the right of an associate to "raise anything they want to about the business with anyone they want to at any time". This right is supported by policies such as the open door policy. The second right of associates referred to by Mr. Ratzlaff was the right "to get answers quickly to whatever they ask". Evidence of this right is the sundown rule. The next employee right or "cornerstone of Wal-Mart's culture" referred to by Mr. Ratzlaff was the fact that in his words "associates are told everything about the business that we can think of to tell them. We freely share very proprietary information with them, in satellite broadcast, newsletters and daily store meetings. No subject is taboo and they know it to my understanding". The final cornerstone in the Wal-Mart culture as described by Mr. Ratzlaff, is once again in his words "that we seek to promote a family atmosphere, so there is no respecting of rank. At a family gathering it doesn't matter if a person is a medical doctor or a pipefitter, you all have equal status". In Mr. Ratzlaff's view these cornerstones create very high expectations amongst the associates that they will get lots of fast answers.

12. Also in support of its goal of regular information sharing with its employees, Wal-Mart holds daily meetings with its staff. The daily morning meeting is held at 8:45 a.m. and is attended by all associates scheduled to commence work up to 9:00 a.m. in the morning. This meeting is held at the front of the store near the courtesy desk. The meeting in this Windsor store is run by either Mr. Johnston or in his absence one of the assistant managers. At this meeting management provides financial information such as sales figures for the previous day as well as information concerning who the top performing department and individuals were on the previous day. New items of stock are discussed as well as issues around safety, shrinkage and loss prevention. An exercise to help associates limber up is also done. The Wal-Mart culture is often discussed by reference to the history of the store and its founder, Sam Walton. Associates are encouraged to participate, become involved and ask questions. The meeting normally ends just before 9:00 a.m. with the Wal-Mart cheer and then the store opens its doors to customers. An additional meeting is held every day after the store closes at 9:00 p.m. It follows the same format as the morning meeting and is an opportunity for the company to provide information to those employees who are not working in the morning and did not attend the morning meeting.

13. The union commenced its organizing drive on April 14, 1996. The strategy utilized by the in-house organizers in getting employees to sign cards, was to approach employees in the parking lot who were on route or at their cars after having completed their shift, and to ask them to sign a union card. On May 2, 1996, the union filed an application for certification accompanied by 91 membership cards in support of its application. By decision dated May 7, 1996, the Board directed that a representation vote be conducted on May 9, 1996. At the vote, 205 employees voted, 9 ballots were segregated and not counted, 43 ballots were cast in favour of the union and 151 ballots were cast against the union. Between April 14, 1996 and April 27, 1996, the union collected a total of 84 cards or an average of 6 cards per day. Between April 27 and May 2 (a period of 5 days) the union collected a total of 7 cards. The relevance of these numbers will be explained later in this decision.



14. The company became aware on April 26, 1996 that associates were being approached to sign union cards. An associate advised Mr. Johnston of this fact. As he had previously been instructed to do, Mr. Johnston immediately telephoned Mr. Ratzlaff to tell him of the union's organizing drive. Mr. Ratzlaff is Wal-Mart's labour relations specialist. Prior to being employed by Wal-Mart Mr. Ratzlaff worked for Woolworth. From 1973 to 1989 he held a variety of managerial positions in Woolco stores and eventually was promoted to the position of Director of Personnel for the Woolco division in 1989. In 1992 he was promoted to Director of Labour Relations for Woolworth Canada. Mr. Ratzlaff told the Board that he was quite familiar with the legal and procedural framework concerning union organizing drives.

15. The first thing Mr. Ratzlaff did was to telephone Mr. Borean to advise him of the situation. Mr. Borean then contacted Mr. Johnston and told him that he would come to the store the next day, Saturday, April 27, 1996 for the morning meeting. Mr. Borean indicated that he was planning a trip to Windsor for that day to attend the funeral of an associate who had worked in the other Windsor store. At the end of this conversation, Mr. Johnston directed one of his assistant managers to telephone all of the associates scheduled to work the next morning to tell them to ensure that they reported for work in time for the morning meeting as Tino Borean was coming to visit the store. Mr. Johnston had the employees contacted because it was the first time Mr. Borean had attended a Saturday morning meeting and he wanted to make sure that all of the scheduled associates attended the meeting and had a chance to hear what Mr. Borean had to say. It was highly unusual for the company to call employees in this fashion and Mr. Johnston was unable to think of another occasion when it had occurred.

16. Approximately 25 to 30 associates attended the morning meeting on April 27th. After concluding the usual routine, Mr. Johnston introduced Mr. Borean and Mr. Borean spoke. Mr. Borean indicated that he was in Windsor to attend the funeral of an associate who had worked at the other store in Windsor. There is some dispute as to what Mr. Borean said next. Mr. Johnston testified that Mr. Borean then indicated to the associates that he had heard that associates were being approached by other associates in the parking lot to sign union cards. Mr. Borean indicated that if anyone had any questions he would be there for the day to answer them, other than the couple of hours he would spend at the funeral. Ms. Mary McArthur, one of the union's inside organizers was at this meeting. She testified that Mr. Borean said that he had heard that there were people going around trying to sign union cards, that he was at the store to find out why people thought they needed a union and that he would be coming around the sales floor to talk to people about that. Ms. Debbie Kulke, a peak-time associate called by the company to give evidence about this meeting, gave another version of what was said by Mr. Borean at the meeting. She indicated that Mr. Borean stated that he knew that there was some talk about a union going on, that he would be in and out of the store, that he was going to go out and ask people if they had any questions or concerns and that he would be there if anyone had any questions or concerns. If anyone wanted to speak to him they were to feel free to do so. Ms. Norma Passador, another associate called by the company to testify indicated that Mr. Borean said that he had heard there was talk about a union. In her words, "later on he would like to go around and talk to associates and see if there was a problem and if he could handle it himself". There was no dispute that after Mr. Borean finished speaking that Ms. McArthur spoke out saying to the associates gathered that it was illegal for management to interfere or coerce or intimidate them to change their decision, that they had a right to be part of whatever was happening and that they did not have to speak to management. After the meeting concluded Mr. Borean did circulate throughout the store speaking to employees for the majority of the day. We heard no evidence as to the substance of those conversations.

17. Although it appears he is still employed by the company, Mr. Borean was not called upon to testify. Counsel for the company indicated that he was not called upon to testify as the company felt it was sufficient for the Board to have heard the evidence of Ms. Passador and Ms. Kulke concerning what Mr. Borean said at the meeting. The employer was aware that Mr. Borean's conduct at this

meeting and his individual conversations with associates thereafter was asserted by the union to be a violation of the Act. The union has urged us to draw an adverse inference from the company's failure to call Mr. Borean. The union urges us to prefer the testimony of Ms. McArthur regarding what Mr. Borean said and did on April 27, 1996. In the circumstances it is appropriate for us to draw an adverse inference from the company's failure to call Mr. Borean. We therefore conclude that Mr. Borean, had he been called to give evidence, would not have given evidence favourable to the company. We accept Ms. McArthur's version of what was said by Mr. Borean to the associates gathered at the April 27th meeting, and that after the meeting he circulated throughout the store asking people why they wanted a union. As further support for our conclusion, we would point out that the evidence given by Ms. Kulke and Ms. Passador, who were called by the employer, while not exactly the same as Ms. McArthur's evidence, corroborates the fact that Mr. Borean acknowledged that he was aware of the union's organizing drive and that he was going to go around the store and speak to associates to see if they had any concerns or problems.

18. The line between legitimate employer persuasion and unlawful intimidation or undue influence must be determined on the particular facts of each case. The company contacted the associates scheduled to work on April 27th and told them to ensure that they were at work in time for the morning meeting as Mr. Borean would be attending the store. This was an unprecedented call and sent the message to employees that the meeting was important. The associates who attended this important meeting then heard from Mr. Borean that he is aware of the union and will circulate throughout the store to discuss presumably either in small groups or individually with associates, why they wanted a union or what problems or concerns they had causing them to want a union. Mr. Borean then circulated throughout the store speaking to employees. While the conduct of Mr. Borean is not a violation of the Act, it sets the tone for what is to follow. In addition, not surprisingly, the union's organizing drive began to falter shortly after Mr. Borean's visit.

19. On Monday, April 29, 1996, Ms. Norma Passador, an associate, approached Mr. Johnston and asked if she could speak at the morning meeting the next day. Mr. Johnston agreed. Ms. Passador did not volunteer and Mr. Johnston did not ask what she wanted to speak about. On Tuesday, April 30th, at the conclusion of the regular morning meeting, Mr. Johnston asked if any associates had any questions and Ms. Passador stated that she had something she wanted to read. She read the following speech:

I have asked to come here this morning as a concerned associate to voice my opinion against the "alleged" rumor [sic] of a union trying to be put in this store. I have worked in this building for 20 years, 18 with Woolco and the same as many of you with Wal-Mart. When Wal-Mart took over Woolco they let us keep our years of seniority for pension, vacation & rate of pay, this is something they did not have to do, but to me as a senior associate it meant a lot.

The young people in the store that have started this do not realize the consequences involved. For some of them the company is not their future when they finish their schooling they will leave and move on to better jobs in their fields, but for the rest of us this is our only income. I for one would like to know what they think they are going to receive from this action.

I believe we receive what other dept. stores have and then some. I know some of you think when we get our annual raise it should be more this is the retail business and that is how it is run. Eventually even big businesses such as the auto companies will have to accept lower wages. A union will only cause discontentment in our store and I assure you as I am standing here Wal Mart [sic] will not put up with this.

I cannot be called a company person because I complain like everyone else if not more. But I am for for [sic] what's best for me and a union is not it.

Also a word to the associates who have started this. Remember the old ruling used to be 51% and the union is in. WRONG every person *must* have a vote, because now the government steps in and

posts a notice in the store when a vote will be taken and we *all* vote and remember as far as I am concerned the union is *not* your friend, it is the friend of people who don't like to work. Also please remember that there are people working in union places that do not get all the benefits we have and you all know what they are. Also if anything if anything [sic] comes of this I assure you I will be one of the first associates to cross a picket line because I need my job.

Thank you for listening to me this morning.

20. When Ms. Passador finished speaking there was considerable commotion. Some of the associates present applauded Ms. Passador's speech, others did not. Either Ms. McArthur or Mr. Dave Cartier (another inside organizer), or both, indicated that they wanted to respond to Ms. Passador's speech. Mr. Borean, who was in attendance at the meeting, did not allow either employee to speak and ended the meeting. He indicated that it was time to open the store as they had customers waiting. It was either 9:00 o'clock or shortly after 9:00 a.m. when the meeting ended.

21. Later the same day Mr. Johnston approached an associate, Jamie Campbell, while he was working. Mr. Johnston opened the conversation by telling Mr. Campbell about the morning meeting, as Mr. Campbell worked an evening shift, either 4:00 p.m. to 9:30 p.m. or 5:00 p.m. to 9:30 p.m. Mr. Johnston then asked Mr. Campbell if he knew what was going on in the store regarding the union and Mr. Campbell answered that he did. Mr. Johnston asked Mr. Campbell if he had been approached by anyone from the union about signing a union card and Mr. Campbell answered that yes he had been approached. Mr. Johnston next, in Mr. Campbell's words, "went on to say something along the lines of a union would not necessarily benefit the store because all of the benefits and everything would have to be bargained for and he also suggested that neither side would have to agree to any specific details". The benefits or details referred to are what are called stakeholder payments or the profit sharing programme. The last thing mentioned by Mr. Johnston to Mr. Campbell was that some employees had been tricked into signing union cards as they were being told they were signing the card to get more information. Mr. Johnston then advised Mr. Campbell to use his own judgement when he was making decisions.

22. The union's application for certification was filed with the Board and delivered to the store on May 2, 1996. As Mr. Johnston was on a day off that day, the assistant manager who received the application contacted him at home to tell him of the application. The assistant manager also contacted Mr. Ratzlaff to advise him of what had occurred. Mr. Ratzlaff had the assistant manager fax him the application. Mr. Ratzlaff then contacted Jon Sims and Tino Borean to advise them of the application. In light of the union's application, Mr. Ratzlaff decided to go to the Windsor store the next day. That evening Mr. Ratzlaff, Jonathan Hamovitch, Vice-President of Human Resources Wal-Mart Canada and Robert Wasserman, in-house counsel for Wal-Mart met with counsel who acted on behalf of the company at the hearing. The union's application and the company's response to it was discussed at this meeting. Mr. Ratzlaff was the company official responsible for all matters pertaining to the union's application for certification, the actions taken by the company with regard to it and all of the decisions made on this matter.

23. At the meeting that evening, issues such as the bargaining unit description, the timing of the vote, and the voting process were discussed. In addition, Mr. Ratzlaff anticipated that when he arrived at the store in Windsor he would face a challenge in dealing with associate questions with regard to the representation issue. As Mr. Ratzlaff put it "I knew or I at least believed that I would be busy because of Wal-Mart's culture of openness and associate expectations that we would speak candidly about any issue they would choose to raise. I attempted to anticipate the kind of issues and questions that would be raised or asked. I sought the advice of counsel on how to deal with and answer questions with respect to the vote and the voting process, with respect to the company's conduct leading up to the vote and with respect to all of those questions I knew would come regarding what the future might hold for



associates and the company and questions regarding what the company might or might not do as a result of the vote". Mr. Ratzlaff's views with regard to the questions he anticipated were also based on the previous experience he had had with regard to union organizing drives in the Woolco stores. Mr. Ratzlaff telephoned Mr. Johnston from the meeting and cautioned Mr. Johnston, and through him his management team, not to answer any questions with regard to the union until Mr. Ratzlaff arrived. He also told Mr. Johnston to put up a question and answer box. The purpose of this box according to Mr. Ratzlaff was to ensure that the employees had a full opportunity to ask questions in case there were no managers available to answer their questions or in case an employee wanted to ask a question a second time. Also, the question and answer box was to provide a way for the employees to ask questions anonymously.

24. After Mr. Ratzlaff left the meeting that evening he decided that it would be appropriate to take some other managers with him to assist in answering employee questions. He anticipated that due to the short period of time before the vote and the Wal-Mart culture, that he would need some assistance in dealing with the questions. Accordingly, the next day, May 3, 1996, he told John Sims and Karen Duff, the Regional Personnel Manager responsible for Windsor, that he wanted them to accompany him to Windsor. In addition, Mr. Borean was directed to meet them in Windsor on Friday evening. This was the first time that such a large contingent of home office managers had attended at an individual store for what would be an extended period of time.

25. Mr. Ratzlaff called Mr. Johnston and confirmed that the notice of the application had been posted in the store and advised Mr. Johnston that a group of managers would be attending at the store. Later in the day when Mr. Ratzlaff again spoke to Mr. Johnston by telephone, Mr. Johnston informed him that the response by associates to the posting was extraordinary and that there was a long line-up of people outside his door waiting to ask him questions about the union's application. Mr. Ratzlaff told Mr. Johnston to tell the employees that help was coming to answer their questions and would be there soon. As a result of his conversation with Mr. Johnston, Mr. Ratzlaff concluded that he needed to prepare and brief the three managers who would be assisting him in Windsor with regard to the union representation issue. He met with Mr. Sims and Ms. Duff before they left for Windsor. Mr. Ratzlaff spoke to them about the manner in which they were to approach the visit to Windsor and of the obligations and expectations placed on the company by the law. Mr. Ratzlaff advised them how to answer questions and gave them some specific examples. Some of the questions discussed concerned issues employees might raise such as: "what will change", "will we keep our benefits", "what would happen after the vote", and "what would the company's attitude towards continuing to operate at that location be after the vote". Mr. Ratzlaff told them that the company could not threaten, intimidate, unduly influence employees or make promises or tell lies. He advised them that questions regarding what might happen if the union was successful would have to be answered in a way that did not threaten, promise or lie. Therefore Mr. Ratzlaff told Mr. Sims and Ms. Duff that those type of questions noted above would have to be answered by telling associates, in his words, "that we couldn't comment on those issues, that it would be inappropriate for us to do so, and that that was all we were able to say in response to those questions at that time".

26. When Mr. Ratzlaff, Mr. Sims and Ms. Duff arrived in Windsor they checked into their hotel and met with Mr. Johnston and Mr. Borean. Mr. Johnston advised them that the tension in the store was incredible so the first item discussed was how the group of managers might defuse the tension, calm the store and continue to serve the customers. Mr. Ratzlaff told the managers how he wanted the morning and evening meetings approached in the days leading up to the vote. He felt due to the Wal-Mart culture that questions regarding the union would come up at these meetings and he wanted to ensure they were handled properly. Therefore he told the management that until the vote was held that he would decide and plan which managers would speak at the meetings and what they would say. Mr. Ratzlaff indicated that he wanted to bring more structure to the meetings before the vote, therefore he

would determine the appropriate content for the meetings. Mr. Ratzlaff then had the same conversation with Mr. Borean and Mr. Johnston that he had had with Mr. Sims and Ms. Duff with regard to the questions he anticipated receiving from the associates and how to answer them.

27. On Saturday, May 4, 1996 Mr. Johnston ran the morning meeting. Mr. Ratzlaff, Mr. Sims, Mr. Borean and Ms. Duff were present at the meeting. Mr. Johnston read from a prepared text and told the employees present at the meeting the following:

The Steelworkers Union applied to the labour board to get in at this store. The labour board will now check to see if the union has enough support for the board to hold a vote on the issue. Does this mean that the union is in? No! It means the union has applied to get in. The union can not [sic] get in until it has a vote. That vote would be by secret ballot and everyone get [sic] to vote no matter if they have signed or not signed a union card.

I want to be sure we get the right answers to your questions. To make that easier, I've put up a question box. You can write down your questions and put them in the box. You don't need to put your name on the question. I'll get answers and give the answers to all of you.

Mr. Johnston indicated that pursuant to Mr. Ratzlaff's instructions he had put the question and answer box up on Friday. Employees were told to put questions in the question box if they wanted to and that management would answer their questions. Mr. Johnston then introduced the three home office managers and Tino Borean to the group of employees present. He told the associates that he had been inundated with questions with regard to the union's application. The additional managers were there to answer questions and to provide information about the union's application and about the vote or anything else. Mr. Ratzlaff also spoke and then the meeting ended. This format with a few additions was followed that evening, at the meeting Sunday and at the two meetings on Monday.

28. After the meeting concluded, the three home office managers, Mr. Borean and Mr. Johnston began to circulate throughout the store. Mr. Ratzlaff described his approach to employees as follows. He told the Board that sometimes while he was walking around an associate would approach him if they saw him coming. However, more often he would go to an associate who was working and strike up a conversation. If the associate kept working Mr. Ratzlaff would help the person. When they stopped working to talk to him, he would introduce himself and indicate where he was from. Mr. Ratzlaff would then ask the associate if he/she had been present at the morning meeting that day. If the answer was yes then Mr. Ratzlaff would tell the person that "we" (the outside managers) were there to answer questions about the union if they had any or about anything else. Mr. Ratzlaff would indicate that if they wanted to talk about the union issue they would have to raise it with him and it was purely voluntary to do so. If the associate indicated that he/she had not attended the morning meeting then Mr. Ratzlaff would make sure that they knew about the union's application. He would ask if they had seen the notice posted in the employee lounge with regard to the application and if the person had not seen it Mr. Ratzlaff would tell them to feel free to go look at it. If the person had any questions after reviewing the notice he/she was told to approach the managers who were visiting the store or Andy Johnston as any of this group would be happy to answer questions. When he was asked whether the store would close if the union was successful Mr. Ratzlaff indicated that it was not appropriate to answer that question. On one occasion, while being confronted by an inside organizer concerning the effect that the employer's refusal to answer any questions concerning whether or not the store would close was having on employees, Mr. Ratzlaff told a group of employees that he had been given legal advice that it was not appropriate to tell employees what the company might or might not do as a result of the vote.

29. The approach utilized by Mr. Sims was similar to that of Mr. Ratzlaff. Mr. Sims generally approached an employee and initiated a conversation. Mr. Sims indicated that his goal was to talk to as many employees as possible and answer their questions on any topic. Mr. Sims recalled being asked whether the store would close if the union got in and the answer he gave was, in his words, "it would

be inappropriate to comment on what might or might not happen". Mr. Sims indicated that many of the associate questions focused on compensation and hours of work.

30. The three home office managers, Mr. Ratzlaff, Mr. Sims and Ms. Duff plus Mr. Borean were in the store circulating amongst the employees from May 4, 1996 until the day of the vote, May 9, 1996. Mr. Ratzlaff spent all of that time in the store talking to associates. Mr. Sims, Mr. Borean and Ms. Duff left the store on occasion to visit the other Wal-Mart store located in Windsor. However, they spent the vast majority of their time in the store which was the subject of the union's application, circulating amongst the employees. Mr. Sims estimated that he spoke to between 40 and 50 employees in the store each day from May 4th to May 9th. Given that Mr. Ratzlaff and Mr. Johnston did not leave the store during the same time period, we can only assume they at least spoke to approximately the same number of associates. We know that they too approached associates and engaged them in conversation. Mr. Borean and Ms. Duff were not called by the company to give evidence before the Board. However, there was no dispute that they spent the majority of their time on the store floor talking to associates. It is logical to assume that they utilized the same approach as that of Mr. Sims and Mr. Ratzlaff with the employees that they spoke to.

31. The union issue came up in one way or another at every morning (and presumably every evening) meeting between May 4th and the day of the vote. After each of the morning meetings concluded, the management group present in the store would move throughout the store for the remainder of the day approaching employees to see if they had any questions. On at least two occasions, both Mr. Sims and Mr. Ratzlaff were advised by one of the union's inside organizers that the refusal of management to answer any questions concerning whether the store would close if the union was successful, was causing employees to fear for their jobs. Management never changed its approach.

32. On May 5, 1996 between 4 and 5 o'clock Mr. Johnston approached a peak-time associate, Mr. Walter Dinatale. Mr. Johnston asked Mr. Dinatale if he had any questions concerning the union or what was going on in the store. Mr. Dinatale told Mr. Johnston that he did not have any questions. Mr. Johnston then went on to tell Mr. Dinatale that he should not feel pressured into signing anything and that he should feel free to make up his own mind. Mr. Johnston told Mr. Dinatale that a lot of things would change if the union was successful, for example, the stakeholders' benefit would be revoked. Then Mr. Johnston told Mr. Dinatale that if he had any further questions he should speak to a member of management.

33. In final submissions counsel for the company acknowledged that both Mr. Campbell and Mr. Dinatale were credible witnesses. Given this concession on the part of counsel and the fact that both Mr. Campbell and Mr. Dinatale's recollection of the conversation they had with Mr. Johnston were clearer and more complete than the recollection of Mr. Johnston, we have accepted their version of the conversation. In his conversation with Mr. Dinatale Mr. Johnston made an explicit threat going to Mr. Dinatale's economic security. In threatening to take away benefits if the union was successful, Mr. Johnston breached section 70 of the Act.

34. At the morning meeting on May 7, 1996, the employees were given the answers to the questions which had been put into the question box. At the end of the meeting Mr. Ratzlaff indicated that all of the employee questions, with answers provided, had been set out in a written document. That written document was available for employees to pick up. The order in which the questions and answers were set out was determined by Mr. Ratzlaff. As it is lengthy we will only set out the first two questions and the answers provided by the company. The question and answer sheet in its entirety is attached to this decision as Appendix A.

Q. "There is an overwhelming concern that if the store unionizes, Wal-Mart will close the store. Is this true?"



- A. It would be inappropriate for your Company to comment on what it will or will not do if the store is unionized.
- Q. "Some people have said that if the store unionized it would be illegal for Wal-Mart to close the store. Is that true?"
- A. This statement is not factually correct. What would or would not be legal for your Company to do following the store becoming unionized depends on the factual circumstances and the application of the law against those circumstances. It would be inappropriate for your Company to comment or suggest what those factual circumstances might be.

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As is obvious, the questions pertaining to whether the store would close if the union was successful were answered with the indication that the company could not answer the question. Before leaving the question and answer sheet we would point out that in response to two other questions concerning the store's lease the employer gave the same response. In response to a question concerning profit sharing and a question concerning payment for work on Sundays the company responded by indicating that this was a matter to be decided at the bargaining table. While this answer may have been interpreted as an indication that perhaps the company would not immediately close the store if the union was successful, the kind of mixed message generated by these inconsistent responses is not sufficient to counteract the fear generated by the employer's consistent failure to respond to the direct questions with regard to the store closure.

### Decision

35. Section 11 of the Act provides that the Board may certify a trade union as the bargaining agent for the employees in a bargaining bargaining unit if satisfied that the following circumstances are present:

- (a) an employer or a person acting on behalf of the employer has contravened the Act;
- (b) the result of the contravention is such that a representation vote does not or would not likely reflect the true wishes of the employees about being represented by the trade union;
- (c) no other remedy including the taking of another representation vote is sufficient to counter the effect of the contravention;
- (d) the Board is satisfied that the trade union has membership support adequate for the purposes of collective bargaining in an appropriate bargaining unit.

36. In dealing with a predecessor to section 11, the Board in *Ex-Cell-O Wildex, Canada*, [1977] OLRB Rep. June 370 articulated its purpose as follows:

"14. Certification without a vote under section 7a was designed as both a deterrent to illegal employer interference in union organizational campaigns, and as a device to provide a meaningful and effective remedy in those cases where the employer's interference operated to destroy the free selection process guaranteed by section 3 of the Act. Prior to the 1975 amendments to the Act, a union seeking to have section 7(4), the predecessor to section 7a, invoked was required to have filed membership evidence on behalf of at least fifty per cent of the employees in the bargaining unit. In recognition of the fact that employer interference often occurs early in an applicant's organizing campaign, and before a majority has been obtained, the fifty per cent membership requirement was removed by the 1975 amendments.

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20. In *Winson* (supra), the Board offered this example of the kind of intimidatory or coercive activity on the part of an employer which would, by its very nature, be likely to conceal the true wishes of an employee on a secret ballot:

'No general rules can be set down as to what circumstances might justify a conclusion that employee desires are not likely to be ascertained in a representation vote. Rather, each case must be decided on its own particular facts. In some instances the actions of an employer may be such that a determination that a vote would not be reflective of employee desires may be very easily arrived at. For example, a warning to employees that the certification of a trade union would result in lay-offs and shorter working hours would, lacking any other considerations, tend to have such an intimidating effect that employees might reasonably be expected to refrain from voting for the union no matter what their true feelings about being represented by it. In such a situation to vote in favour of being represented by the trade union might well appear to employees to be tantamount to voting themselves either out of a job or, at best, a drop in pay.'

In *Trulite Industries Limited*, [1983] OLRB Rep. May 821 at paragraph 19 the Board wrote:

19. Certification without a vote under section 8 was designed as a deterrent to illegal employer interference in union organizing campaigns, and a device to provide a meaningful remedy in those cases where the employer's interference undermines his employees' statutory rights, and, in addition, precludes the Board from undertaking its usual determination of employee wishes through a representation vote or an assessment of the union's membership evidence. In other words, section 8 is a kind of "second best" solution, to be applied where the employer's misconduct not only frustrates the union's organizing drive, but also impairs the Board's ability to ascertain whether the majority of the employees do or do not wish to be represented by the a union.

37. Section 11 is not intended to punish an employer for its conduct but its purpose, simply stated, is to ensure that an employer does not benefit from its wrongdoings (see in this regard *Robin Hood Multi Foods*, supra, and *Dylex Limited*, [1977] OLRB Rep. June 357). It is not appropriate for an employer to succeed in defeating a union's attempts to organize the employees by acting contrary to the Act.

38. Clearly the conduct of Wal-Mart in this case is not typically what the Board would see in applications pursuant to section 11 of the Act. The company did not discipline, harass or fire any of the union's in-house organizers. It did not push an employee association on the employees. However, in the highly unique circumstances of this case it did contravene the Act and it is appropriate to certify the union pursuant to section 11 of the Act.

39. The first requirement of section 11(1) is that an employer or someone acting on behalf of the employer must have breached the Act. In this case we are satisfied that in several instances the employer's conduct breached section 70 of the Act. In *Viceroy Construction Company Limited*, [1977] OLRB Rep. September 562 the Board stated the following with regard to the purpose of section 70 (then section 56 of the Act):

9. Insofar as it relates to freedom of expression that section seeks to balance two competing interests. On the one hand it protects the right of an employer to express his opinion in opposition to a trade union. On the other hand it recognizes the sensitive nature of employment relationships and protects employees from utterances of an employer that would have a coercive impact on their decision whether or not to be represented by a union.

10. The legislative scheme anticipates that having been exposed to the views of both employer and union the employees should decide for themselves. To insure the independence of their decision section 61 of the Act prohibits intimidation or coercion of employees by a trade union and section 56 imposes a similar restraint upon an employer. But while section 61 prohibits "intimidation or coercion" section 56 is extended to include a prohibition of "coercion, intimidation, threats, promises or undue influence". Implicit in the broader reference to threats, promises and undue influence, is the recognition that employees may be especially vulnerable to the influence of their employer.

11. The Act recognizes that an employer is in the more immediate position to affect an individual's employment relationship, if only by virtue of its freedom to advance, preserve, impede or terminate an individual's employment. Therefore, by the terms of the Act, that very freedom is restricted. In order to protect and promote the collective bargaining process the Legislature has provided that no employer is free to affect a person's job security or conditions of employment when the employer's action is prompted by an anti-union motive, (e.g. section 58 of the Act). For the same reason, by virtue of the Act, an employer's freedom of expression regarding possible union representation of his employees is not absolute. While he is of course free to express his view of representation by a trade union he may not use that freedom of expression to make overt or subtle threats or promises motivated by anti-union sentiment which go to the sensitive area of changes in conditions of employment or job security. ...

12. The protection of the integrity of the individual's employment relationship is central to the scheme of The Labour Relations Act. This Board has consistently found breaches of the Act where statements have been made which threaten an individual's employment, and that has been so whether the threat was made by a union (e.g. *Walter Selck of Canada Limited*, [1964] OLRB Rep. 138; *V/R Wesson Limited* [1968] OLRB Rep. Nov. 811) or by an employer (e.g. *Bell & Howell Canada Ltd.*, [1968] OLRB Rep. Oct. 695).

40. We have two concerns with Ms. Passador's speech on April 30, 1996. First of all the company, at the end of Ms. Passador's speech did not distance itself from her comments. Neither Mr. Borean nor Mr. Johnston stated that her comments were not reflective of the company's views on unions and the effect that a union would have in the store. Secondly, even though we accept that there were legitimate reasons for ending the meeting at that point, namely that it was time for the store to open to its customers, by not allowing the union supporters to speak, the associates who were present were left only with the views of Ms. Passador. What is crucial in our view, is the effect that Ms. Passador's comments may have had on employees in the store. What message would the average or reasonable associate hear upon listening to Ms. Passador's speech? Clearly Ms. Passador had concerns about the effect the union would have on the store. She felt that the in-house organizers do not realize the consequences involved in unionizing. She then says that the organizers don't need their jobs but she does. A couple of sentences later she points out that Wal-Mart will not put up with the discontent the union will bring to the store. She concludes her speech with a statement that she will be one of the first associates to cross the picket line because she needs her job. Ms. Passador never said that the store would close if the union was successful in its attempt to organize employees. However, because of what she did say an associate listening to her would have likely concluded that she had concerns for her future job security in the event that the union was successful. We have no doubt that Ms. Passador believed strongly in what she was saying and that this was apparent to those associates listening to her. Our concern is not with the fact that Ms. Passador spoke or with what she said. It is that employees listening to her speak might have concluded that her views concerning the effect of unionization were those of the company. The effect of her comments could easily have been to plant a seed of doubt regarding how Wal-Mart might respond to a union in the minds of those other associates listening to her.

41. It was never suggested that management arranged for Mr. Passador to make the comments she did. We accept that the views expressed were her views. There is nothing wrong with allowing Ms. Passador to speak her mind. However, in light of the fact that the company after inviting questions or comments, did not clarify that the comments were not reflective of the company's views, allowed the spectre of job insecurity to be raised in a situation in which it is reasonable for employees to conclude that it was a legitimate concern. In the circumstances, it would not be unreasonable for some of the associates to conclude that the views of Ms. Passador were reflective of the views of the company and that the company agreed with her assessment of the situation. In allowing this message to be sent at a meeting which management directs and controls, without distancing itself from her remarks or allowing the union supporters the opportunity to balance her remarks, the company has sought to intimidate or unduly influence employees with regard to their decision on union representation contrary to section



70 of the Act. An employer simply cannot allow an employee to make a speech containing the subtle threats to job security such as those contained in Ms. Passador's speech, at a meeting run by management, fail to distance itself from the comments and then silence the union's supporters in the manner in which it did. While the company did not make any threats, it allowed threats to be made in circumstances in which they could be attributed to the company. Ms. Passador's speech had a chilling effect on the union's organizing drive.

42. The attendance of four outside managers in the store from May 4th to May 9th who spent the vast majority of their time approaching employees while they were working in the store and engaging them repeatedly in conversations regarding the union, was an extremely risky response for the company to have made to the union's organizing drive. While the facts of this case bear little similarity to the facts in *K-Mart Canada Limited (Peterborough)*, [1981] OLRB Rep. Jan. 60, in dealing with the effect of having one manager (the Manager of Personnel and Employee Relations) approach staff over a three week period the Board made some comments that are equally applicable to the case before us:

40. The impact of individual employees of being engaged repeatedly in conversation by a managerial authority of Mrs. Fox's rank cannot be underestimated, particularly when it comes at or about the time of a series of management meetings opposing a union. Mrs. Fox circulated continuously among the employees for three weeks in November. An employee observing her conduct as she spoke with other employees could reasonably suspect that Mrs. Fox would eventually come to know who the union sympathizers were, as indeed she did. An employee exposed both to the battery of meetings held by Mr. Gilchrist and the sustained rounds of the store by Mrs. Fox would reasonably come to entertain a concern for his own security, a concern that joining the union would leave him open to the kind of surveillance and pressure that was then being openly brought to bear on Clark and O'Connor. Management's deliberate blitzing of the employees can only be interpreted by this Board as calculated to put pressure on the employees, to obtain information from them and to bring undue influence to bear on their ability to freely choose to associate with the union. The tactic of having Mrs. Fox attend the anti-union meetings of Mr. Gilchrist and then circulate among the employees, engaging in one on one conversations day after day over several weeks, goes beyond mere management concern for employee problems. It becomes a subtle and effective tactic of intimidation. While a one or two day visit by Mrs. Fox to convey the employer's feelings on union representation might not offend the provisions of section 56 of the Act, her presence and activities in the store during the fall of 1979 went beyond that purpose and, in the circumstances of this case, constituted intimidation and undue influence of the employees contrary to section 56 of the Act.

43. In this case there was no surveillance or pressure being brought upon the union's inside organizers. Nor was there a series of management meetings opposing the union. However, there were daily morning meetings at which the union issue was discussed. At their conclusion the four outside managers would start circulating and continued to do so for the majority of their time until the store closed for the day. They did this for the five days leading up to the vote and on the day of the vote. In the course of these conversations they learned who the union supporters were and who were not union supporters contrary to the protection afforded by the Act. The presence of the four outside managers certainly sent the message that the union issue was a very important one to the company. The Board heard a great deal about the Wal-Mart culture and the open relationship between management, as representatives of the company, and the employees. Given this "culture" it is understandable that Mr. Ratzlaff, as the official coordinating the company's response, would want to ensure that resources were available to deal with employee questions. But, there is a big difference between having resources available, which employees can seek out and what occurred in this case. Mr. Ratzlaff's strategy was to have four outside managers, senior managers, constantly approaching employees over a six day period actively soliciting questions from the employees on the union issue. This conduct, four managers (and this is not counting Mr. Johnston who is doing the same thing) repeatedly engaging employees in a conversation about the union, goes beyond mere assistance to employees based on a concern that their questions be answered, and becomes an extremely effective tactic of intimidation or undue influence

contrary to section 70 of the Act. As the Board has noted before, an employer cannot hide behind “open door” policies when the effect of the open communications is to put undue influence on employees concerning their selection of a trade union to represent them. This repeated and persistent personal contact initiated by the employer and not requested by the employees was clearly designed to identify the union supporters as well as communicate the message which we will next deal with.

44. This conduct of the employer, namely the strategy of having four managers constantly engaging employees in conversations about the union, is not the breach of the Act or the conduct in and of itself which led us to conclude that it is appropriate to certify the union pursuant section 11. The conduct of the employer which gave us the most concern, while part of the approach detailed above, was far more harmful to the free will of the employees. As noted, we have heard a great deal about the Wal-Mart culture and we will not repeat what we have said earlier. We accept that there is a unique culture fostered in this company, one in which employees are encouraged to ask questions and expect to get answers. One of the key concerns of the associates in this store was whether the company would continue to operate the store if the union was successful. Paul Ratzlaff knew that this would be a concern before he even went to the store. In the briefing of the managers Mr. Ratzlaff told them to expect the question and how to answer it. The question was in fact raised with the outside managers by associates. However, despite being held out to the associates as the individuals who would answer their questions, pursuant to Mr. Ratzlaff’s instructions they told the associates that they were not in a position to answer that question. On at least one occasion Mr. Ratzlaff told employees that he had been instructed by legal counsel not to answer that question. Despite all of the employee rights to information, the open door policy and the sundown rule, management refused to answer any questions concerning the store closure issue.

45. Given the Wal-Mart culture and the expectations of employees that answers to their questions would be given, what would the effect of this refusal to answer such a crucial question be on the average, reasonable associate? In assessing the effect of the refusal to answer it is also important to bear in mind that management over a six day period is continually approaching the associates and asking them if they have any questions about the union’s organizing drive. The managers present in the store in the days leading up to the vote entered into dozens of daily one-on-one conversations with associates about the union and when asked, refused to answer any questions with regard to the store closure issue. The company attempted to portray the store closure issue as a union issue and pointed out that it was not raised with a great deal of frequency with the managers. In our view it is irrelevant how many times the associates asked one of the managers this question, as it would not take long for it to “get around” the store that this question was not being answered. Why ask if you knew it would not be answered?

46. Paul Ratzlaff held himself out to the Board as a labour relations expert. He orchestrated the company’s response to the union’s organizing drive. Giving him the benefit of the doubt, he may not have initially intended the presence of the outside managers and their refusal to answer any questions with regard to store closure to have had the effect it did on the associates in the store. However, as time went on both Paul Ratzlaff and the other managers knew what effect their actions were having. The inside organizers told them that by not answering the question with regard to store closure, they were fueling employee fears. The managers, knowing the effect the refusal to answer the questions of employees with regard to store closure was having, nevertheless continued to refuse to answer any questions on this issue.

47. In our view you cannot have it both ways. If you adopt the approach of constantly soliciting questions in an environment such as was present in this case, you have to answer them. Either you answer the questions asked or you do not circulate amongst employees in the manner in which management did in this case. Mr. Ratzlaff told the associates that managers would answer their

questions and then did not answer the one question which was foremost in the minds of some of the employees. By not reassuring people that the store would not close the managers knew what conclusions the associates would come to. Manipulating the circumstances in this fashion allowed the seed to be planted and grow in the minds of the associates that if they supported the union they might lose their jobs. This is a subtle but extremely effective threat to the job security of the associates.

48. It is always difficult to place oneself in the shoes of the employees in the store to determine what effect the company's campaign would have had on them. However, in the unique circumstances of this case, and we stress that they are unique, we are of the view that the company's failure to answer the questions of associates with regard to the issue of store closure would cause the average reasonable employee to conclude that the store would close if the union got in. Given that the inside organizers told management that this was in fact happening, and management did not change its approach, we are satisfied that the company intended employees to draw this conclusion. There is no legal prohibition against answering questions with regard to store closure by saying that the company would not close and would sit down and negotiate with the union if the union was successful. Obviously, it is only illegal for the company to say that the store would close. Therefore, by not alleviating employees' concerns by answering the question, the company was intentionally fueling employee concerns. Accordingly, we find that the conduct of the employer in circulating amongst the employees and engaging them in individual and group discussions regarding the union, in the fashion in which it did, and the company's refusal to answer any questions with regard to what the store would do if the union was successful, was a breach of section 70 of the Act. Coupled with the refusal of the individual managers to answer the questions with regard to store closure is the refusal of the company to provide an answer in the question and answer sheet which was distributed to the associates by the company.

49. The second and third factors set out in section 11 provide that a certificate is not to issue pursuant to this section unless the Board is satisfied that no other remedy, including the taking of another representation vote is sufficient to counter the effects of the employer's contravention of the Act. As we have already noted, this is not a typical section 11 case. However, in our view the determinative factor set out in section 11(1)2 is not whether the employer breaches of the Act are flagrant or egregious but whether or not the employer's breaches of the Act result in the Board concluding that a representation vote does not or would not likely reflect the true wishes of the employees in the bargaining unit about being represented by a trade union. The employer in this case is sophisticated and its response to the union's organizing drive reflects this. We have no doubt that the intentionally generated implied threat to job security which occurred in this case had the result of rendering the representation vote taken on May 9, 1996 meaningless. This case is a classic example of a situation in which the conduct of the employer changes the question in the minds of the employees at the vote on May 9th from one of union representation to one of "do you want to retain your employment" (see in this regard *Straton Knitting Mills Limited*, [1979] OLRB Rep. Aug. 801, *Manor Cleaners Limited*, [1982] OLRB Rep. Dec. 1848, *Knob Hill Farms Limited*, [1987] OLRB Dec. 1531 and *Beaver Lumber*, [1992] OLRB Rep. May 553).

50. Section 11(1)3 requires us to consider whether any other remedy short of automatic certification, including the taking of a second representation vote, is sufficient to counter the effect of the employer's contraventions of the Act. We are of the view that a second representation vote in this case would be equally meaningless. We would adopt the comments made by the Board in *Lorain Products Canada Limited*, [1977] OLRB Rep. Nov. 734 at paragraph 10 that:

the threat to job security and/or economic well-being cannot now be erased by either the employer or the Board. It undoubtedly followed the employees into the voting booth on October 5 and would follow the employees into the voting booth in any subsequent vote.



The Board has repeatedly recognized that threats to an employee's job security will undermine the ability of the employees to freely express their views with regard to union representation. Therefore a second vote in this case is not appropriate. (See in this regard *Robin Hood Multi Foods Inc.*, [1981] OLRB Rep. July 972, *Brinks Canada Limited*, [1982] OLRB Rep. Aug. 1140, and *Aurora Rest Haven Extended Care and Convalescent Centre*, [1986] OLRB Rep. July 1031.

51. The final question the Board must answer is whether the union has support adequate for the purposes of collective bargaining. On May 2, 1996 when the union filed its application for certification it filed membership evidence on behalf of approximately forty-four percent of the bargaining unit. Although Wal-Mart raised concerns with regard to the membership evidence filed on behalf of one employee and suggested that as a result the Board should generally question the membership evidence in this case, we do not share the employer's concerns. We are of the view that the membership evidence filed in this case is completely reliable. At the time of its application for certification, the union after a very brief campaign, enjoyed the support of forty-four percent of the bargaining unit. One week later as a result of the employer's contravention of the Act that support had plummeted to approximately twenty-one percent. However, as noted we are of the view that this drastic drop in support was not reflective of the true wishes of the employees. Accordingly, we are of the view that the trade union has membership support adequate for the purposes of collective bargaining.

52. The Board finds that the applicant is a trade union within the meaning of section 1(1) of the *Labour Relations Act, 1995*.

53. Having regard to the agreement of the parties the Board hereby finds the following bargaining unit to be appropriate:

all employees of Wal-Mart Canada Inc. at 1950 Lauzon Road, in the City of Windsor, save and except assistant managers, persons above the rank of assistant manager and the personnel manager and persons employed on a temporary basis for a fixed period of time.

54. Accordingly to summarize, the Board hereby finds that:

- (a) the employer has violated section 70 of the Act as outlined in the body of this decision;
- (b) the result of the employer's contravention of the Act is such that the true wishes of the employees were not expressed in the vote held on May 9, 1996;
- (c) it is not appropriate to direct that a second representation vote be taken;
- (d) the union has membership support adequate for collective bargaining;
- (e) a certificate shall issue to the union for the bargaining unit set out above.

In addition, the Board hereby directs:

- (a) that representatives of the union be allowed to convene meetings within thirty days of the date of this decision with the bargaining unit employees in the absence of members of management. The meetings will last not more than one hour and will be held on company premises during normal working hours without loss of pay for employees attending such meetings. The meetings will be scheduled in such a way that the union has an opportunity to talk to as many of the bargaining unit employees

as possible. The meetings will be scheduled in consultation with management so as to ensure that the company's retail operations are not disrupted. This may entail having more small meetings rather than one or two large meetings.

- (b) the attached notice Appendix B from the Board is to be posted throughout the store at the locations where notices are normally posted, as soon as possible after receipt of this decision.

55. The Board will remain seized with regard to any matter arising out of this decision.

**DECISION OF BOARD MEMBER R. W. PIRRIE:** February 10, 1997

1. With respect, I interpret the evidence in this case differently from the majority and as a consequence I dissent from their decision to certify the union.

2. To start with, I have a great deal of difficulty with the material at paragraphs 15 through 18 above concerning Mr. Borean's appearance at the store April 27th. At paragraph 18, the majority hold that "... the conduct of Borean is not a violation of the Act". Yet at paragraph 17 the majority draw an adverse inference from the company's failure to call Mr. Borean as a witness. There was conflicting testimony concerning what he said at the meeting. Further, while Ms. McArthur, one of the in-store union organizers, testified she saw Mr. Borean circulate through the store, the union did not produce a single witness to testify as to what he said to employees while circulating. That consideration does not, however, draw an adverse inference.

3. I also found instructive the evidence that Ms. McArthur spoke out at the April 27 morning meeting following Borean's comments. It is instructive in two ways. First for what she told her fellow associates (see paragraph 16) and secondly for the fact that she was not prevented or hindered in any way from having her say. The relevance of this latter will be touched on in my later remarks.

4. In general I attach little or no significance to Mr. Borean's presence, or what he did or said in terms of the outcome of this case.

5. My next difficulty is in relation to the majority's views concerning Ms. Passador's speech, and what transpired at the April 30th morning meeting. One must read paragraphs 19 and 20 setting of the facts and then paragraphs 40 and 41 which draws their conclusions from those facts.

6. The first issue for me is the description of how that morning meeting ended. After Ms. Passador spoke against the union, Ms. McArthur and/or Mr. Cartier indicated they wished to respond on behalf of the union. It is acknowledged it is at least 9 a.m. and there are customers waiting at the entrance. But it gets expressed in terms that Mr. Borean, "... did not allow either employee to speak and ended the meeting." Later at paragraph 40 the majority holds that "... even though we accept that there were legitimate reasons for ending the meeting at that point, namely that it was time for the store to open to its customers, by not allowing the union supporters to speak, the associates who were present were left only with the views of Ms. Passador." I am sorry but the majority can't have it both ways. There was no more time for anyone to speak the morning of April 30th. As noted in paragraph 3 above, Ms. McArthur was not prevented from speaking at the April 27th meeting. Similarly, Mr. Cartier's request to speak at the April 29th meeting - which Mr. Borean also attended - was acknowledged by management and he spoke on behalf of the union. I would have liked the majority to draw their conclusions from those facts, and not further impugn Mr. Borean, as I believe this award does.

7. The second difficulty I have is with the line of reasoning which follows in paragraph 40. The gist of my problem is contained in the following statement. "Ms. Passador never said that the store would close if the union was successful in its attempt to organize the employees. However because of what she did say, an associate listening to her would have likely concluded that she had concerns for her future job security in the event that the union was successful. We have no doubt that Ms. Passador believes strongly in what she was saying and that this was apparent to those associates listening to her. Our concern is not with the fact that Ms. Passador spoke or with what she said. It is that employees listening to her speak would have likely concluded that her views concerning the effect of unionization were those of the company."

8. It would appear that it is okay for Ms. Passador to speak, the problem is that others might listen and draw inferences. To suggest that her fellow employees were not able to internalize her comments and weigh them in conjunction with the other things being said or not said by the company and the union, and in the end make an informed, independent, rational decision in the voting booth, is to give too little credit to the intelligence of these employees.

9. The third problem for me is the notion the majority have that the company erred by not distancing itself from Ms. Passador's remarks, or that it did not allow the union's supporters the opportunity to balance her remarks. With respect to the latter, I reiterate that Ms. McArthur had no difficulty speaking up at the April 27 meeting, and while management did not offer time to the union organizers at subsequent meetings, neither did the union request time to speak.

10. With respect to distancing itself from Ms. Passador's remarks, I say nonsense. Every employee knows that every employer, at least in the retail sector, would prefer not to have a union represent its employees. But more specifically, when I read what she said at paragraph 19 of the majority award, I would ask what it is that the majority would have Wal-Mart do or say. Should they have said, for example, that at paragraph 1, they were wrong to let Ms. Passador keep her Woolco seniority. That at paragraph 2, Ms. Passador is wrong to suggest the young people presently in school will not move on to better jobs in their fields on graduation. That at paragraph 3, Ms. Passador is wrong to believe that what the associates receive from Wal-Mart is comparable with what other stores pay, but is in fact less, or that a union would result not in discontentment but in peace and harmony in the store. That at paragraph 4, Ms. Passador shouldn't be for what is best for her, but should instead be for the union. That at paragraph 5, Ms. Passador is wrong about the certification process, that she is wrong and that the union is the associates friend, that she is wrong and doesn't need her job and shouldn't cross the picket-line. What are the views that Ms. Passador expressed that the majority would have Wal-Mart take issue with.

11. Based on my reading of the evidence, Ms. Passador conceived of the idea, wrote out what she wished to say, and delivered her thoughts entirely on her own. I would add that the evidence also indicates that her comments were followed by considerable applause on the part of her fellow employees present. This was in fact part of the give and take, and the expression which characterizes a typical union organizing campaign.

12. Much of the rest of the majority's decision centers on the Wal-Mart culture of openness with its employees, the effect on the employees of the home office management team being in the store in the period leading up to the vote and the failure of the management group to respond to the "store closure" question.

13. Along with the majority, I am troubled by the significant management presence in the store, and the effect this may have had on the situation. I am, however, similarly troubled by the significant union presence in the form of picket lines outside the store during the same period, and the effect this may have had on the employees.



14. Indeed, as with the majority, I would have preferred that management had directly answered the question, “Will Wal-Mart close the store if the union wins the vote?”. Both sides in this case maintain the other was feeding off the company’s not responding to the expressed concern about this issue and indeed the majority found the union’s position to be persuasive. However, I cannot ignore the fact that management did make it clear to the employees that there would be a life after the vote, and that many of the issues of concern to the employees would be resolved through negotiations should the union win the vote.

15. For example, at paragraph 34 of the award the majority notes that a couple of questions were answered with the observation - the matter “... would be decided at the bargaining table.” For clarity and balance, I quote the questions and answers.

Q. “With the union, will we get time and one half for Sundays?”

A. “It would be inappropriate for your company to make any comment regarding what would happen and/or what you will or will not get if the union gets in. If the union gets in, compensation programs would be subject to what your company and the union agree to at the bargaining table.”

Q. “Can you explain the ‘first contract arbitration’?”

A. “If the union gets in, and the union does not agree with the demands made by the union, and the Minister of Labour advises that the parties cannot reach an agreement, either your company or the union may apply for binding arbitration. The terms and conditions of the first collective agreement shall then be settled either by a Board of Arbitration or the Ontario Labour Relations Board whichever shall be selected.”

16. For the majority, however, those responses are not sufficient. Again, putting themselves in the heads of the employees, the majority note “...this (these) answers may have been interpreted as an indication that perhaps the company would not immediately close the store if the union was successful ...”. Such nonsense.

17. Similarly at paragraph 21 of the award, the impugned conversation between Messrs. Johnston and Campbell is instructive. As quoted, Mr. Campbell indicates Mr. Johnston “went on to say something along the lines of a union would not necessarily benefit the store because all of the benefits and everything *would have to be bargained for* and he suggested that neither side would have to agree to any specific details.”

18. There were other instances where company spokespersons, including Mr. Ratzlaff, made clear statements to the employees that negotiations would take place if the union won the vote. Further, the union’s inside organizers knew it would be illegal for Wal-Mart to close the store if they won the vote, and there were numerous occasions when they both publicly and privately made this point with their fellow employees.

19. There was, in my view, some balance around the “store closure” issue, and I am not persuaded it played this significant role my fellow panel members attribute to it. I do not see the behavior of the Wal-Mart management as violating section 70 of the Act.

20. The evidence of the in-store union organizers was that they contacted and attempted to sign into membership all but about 20 of the associates in the store. As noted in paragraph 13 of the majority award, they succeeded in having 91 employees sign cards. Noting that 205 employees voted on May 9th, approximately half of the employees said “no” to the union’s overture to represent them in their employment relationship during the organizing campaign. And, of course, this was before any of the management activity which the majority impugn. Quite likely, not all of the people who said “no” to

signing union cards had made up their mind to vote "no" to the union. That said, it is equally likely not all of the ninety-one who did sign union cards had fully committed themselves to the union.

21. In the final analysis, 43 employees voted in favour of the union. Allowing for the committed in-store organizing group, this leaves a sizable number of employees who did not feel sufficiently threatened by the words and actions of the Wal-Mart management. At the same time, 151 employees weighed the issue, as did the 43, and voted "no" to the union's overture to represent them in their relationship with Wal-Mart. I am not prepared to disenfranchise such a sizable majority of employees based on the evidence we heard in this case.

22. I would dismiss the union's section 96 complaint, allow the vote results to govern, and dismiss the union's application for certification.

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APPENDIX A  
WAL-MART CANADA INC.



"WE ARE FAMILY"

May 7, 1996

DEAR ASSOCIATE:

We want to thank each of you who have taken the opportunity to submit written questions in the store's Question Box for our response. The following is a reproduction of each question we received as well as your Company's response, which we hope will be of assistance:

- 1 Q: "There is an overwhelming concern that if the store unionizes, Wal-Mart will close the store. Is this true?"  
A: It would be inappropriate for your Company to comment on what it will or will not do if the store is unionized.
- 2 Q: "Some people have said that if the store unionized it would be illegal for Wal-Mart to close the store. Is that true?"  
A: This statement is not factually correct. What would or would not be legal for your Company to do following the store becoming unionized depends on the factual circumstances and the application of the law against those circumstances. It would be inappropriate for your Company to comment or suggest what those factual circumstances might be.
- 3 Q: "The union are telling people that have only 1 or 2 shifts a week that they can guarantee them more hours?"  
A: Don't be misled by false and misleading statements made by the union and/or rumours. Nobody can guarantee more hours since the number of hours available to associates is directly related to the store's financial performance.
- 4 Q: "If you sign the card and you don't go to the meeting do they count that signature as a yes vote?"  
A: No. What does matter is if you vote and how you vote when the vote is held. The store will only be unionized if 50% plus one person of the total number of people who actually vote in person, choose to vote for the union.
- 5 Q: "Can you change your mind if you signed the card. How do you change it?"  
A: "You sure can. The only thing that matters as to whether the store is unionized is how you vote when the vote is held. If you signed a card and now you want to change your mind, vote "no"."
- 6 Q: "Stakeholders and Profit sharing is it still in place if we're union."   
A: It would be inappropriate for your Company to make any comment regarding what would happen and/or what you will or will not get if the union gets in. If the union gets in, compensation programs would be subject to what your Company and the union agree to at the bargaining table.
- 7 Q: "If this place is leased - will Wal-Mart buy the space if we're a union. When is our lease up for renewal? Are we not on a 3 year probation as to whether we stay Wal-Mart?"  
A: As to the first question, it would be inappropriate for your Company to comment as to what it would or would not do if the store is unionized. As to the second question, the current lease term ends on January 31, 2003. The Company



must decide whether it wishes to exercise its option to extend the lease term beyond that date by January 31, 2001. As to the third question, no.

3 Q: "How much union dues come out of our pay?"

A: The amount of union dues, special assessments, and initiation fees are determined by the union exclusively. Union dues vary, but within the retail industry \$ 20 - \$ 24 per employee monthly is typical, and applies equally to all employees, including part time and full time.

79 Q: "Why is an American union being used. Why steelworkers for a retail store?"

A: We don't know.

10 Q: "Why are we not able to have a choice of what union we pick. Shouldn't we have a choice?"

A: The law does not restrict your choice.

11 Q: "Is Wal-Mart looking into if our wages can improve?"

A: We conduct salary surveys on an annual basis to ensure that our wages are competitive. Our surveys are done both nationally and locally and include companies such as Zellers, K-Mart, Canadian Tire, Price Costco and Home Depot.

If we learn that our wages are not competitive we increase them so that they are competitive. In addition to competitive wages, associates at Wal-Mart can share in our profitability through our Stakeholders and Deferred Profit Sharing Programs.

12 Q: "There are Wal-Mart stores with security at the open "in" doors and the "out" doors. Will that happen here?"

A: We do not normally hire security guards for the front end of our stores. We do however make exceptions on some stores based on need.

13 Q: "Will the front doors ever be changed?"

A: One of the reasons we did not put automatic doors into all of our stores is that we wanted to keep expenses down, since we pass cost savings on to our customers. Some of our new stores do have automatic doors. On a case to case basis, we will be happy to review the merit of automatic front doors.

14 Q: "What are the complaints that made associates want a union. What did they do to try to rectify their problem first with Wal-Mart before going to union?"

A: We believe a majority of associates do not want a union, but some of the key issues appear to revolve around scheduling, wages and benefits, consistency of policy and communication. We do not know what associates who want a union did to raise these issues, however we at Wal-Mart know that using the Open Door has successfully resolved these kinds of concerns.

15 Q: "When union fights for a contract, can it not take years to get settled?"

A: It could. The length of time it takes to negotiate a contract depends upon the nature of the demands made by the union, the preparedness of your Company to meet those demands, and the time schedules agreed to by the parties.

16 Q: "With the union, will we get time and one-half for Sundays."

A: It would be inappropriate for your Company to make any comment regarding what would happen and/or what you will or will not get if the union gets in. If the union gets in, compensation programs would be subject to what your Company and the union agree to at the bargaining table.

17 Q: "The people handing out cards, are they preped for giving out correct answers to questions asked before people sign, and are they told what they can and can not say to get someone to sign."

A: We don't know what you have or have not been told by the union. You should decide for yourself whether what you have been told is true or not, whether it's been said by the union or your Company.

18 Q: "If Wal-Mart is not an anti-union company then in the Wal-Mart take over process why didn't they purchase the unionized Woolcos."

A: Wal-Mart is not anti-union. Wal-Mart is pro-associate and our associates world wide have unfailingly shown their desire to not have union representation. Contrary to what the union would like you to believe, when Wal-Mart acquired certain of the former Woolco stores, it made its determination strictly on the basis of which stores were most productive. Wal-Mart chose not to acquire 22 former Woolco stores. Some were union and some were not.

19 Q: "Can you explain the "first contract arbitration".

A: If the union gets in, and your Company does not agree with the demands made by the union, and the Minister of Labour advises that the parties can not reach an agreement, either your Company or the union may apply for binding arbitration. The terms and provisions of the first collective agreement shall then be settled either by a board of arbitration or the Ontario Labour Relations Board, whichever shall be selected.

20 Q: "Were you aware that asking us if we were approached to sign union cards and who approached us, is illegal?"

A: What you are asking is dependent upon the circumstances. What is illegal is your Company in any way attempting to interfere with your legal rights under the Labour Relations Act, and we would never show you the disrespect of doing that.

21 Q: "Can a union hurt this store? e.g.: when it comes to renewing the store lease, will Wal-Mart not renew and close its doors therefore we are out of a job ??? Please help clear this confusion for me and others. Thank you :"

A: Whether or not a union would hurt this store is a matter for you to decide in your own mind. It would be inappropriate for your Company to comment on what it will or will not do if the store is unionized.

22 Q: "Can a union really help this store? How? Or how not?"

A: We don't believe that it would. Your Company prides itself on being able to listen and respond to its associates directly without the need for third party intervention. Our Open Door policy allows each associate the freedom to express his or her opinion or challenge decisions he or she feels are unfair or not in your Company's best interest, without fear of retaliation. Wal-Mart is pro-associate. We consider associates to be partners in our Company's future, and believe that relationship flourishes without the need for third party intervention.

23 Q: "Does seniority in the store matter in regards to promotions and raises in salary as it stands right now. (non-unionized)."

A: Our salary rates are established based on a start rate, a three month rate, a one year rate, a two year rate, etc.. Increases are based on performance. Typically there is a relationship between length of service and performance. Promotions are also based on performance and in many situations longevity allows people to perform the job at a "higher" level.

24 Q: "Is it not true that the only way that seniority and benefits will decrease is if the company proposes it and it is accepted by the majority of the associates through a voting process."

A: No.

25 Q: "Concerning the union, I would like to know who will answer all our questions, pros and cons, will it be management, head office or a third party, i.e. the Labour Board. Thank you for your time."

A: We can't comment on what the union or the Labour Board will or will not do. However, your Company has tried and will continue to try its best to answer all of your questions as quickly and accurately as possible through your company's management team.



## Appendix "B"

## The Labour Relations Act

**NOTICE TO EMPLOYEES**

Posted by Order of the Ontario Labour Relations Board

THE BOARD, AFTER A LENGTHY HEARING, HAS DETERMINED  
THAT DUE TO WAL-MART'S CONTRAVENTION OF THE LABOUR  
RELATIONS ACT, 1995, IT IS APPROPRIATE TO CERTIFY  
THE UNION.

THE COMPANY AND THE UNION HAVE THE BOARD'S REASONS  
FOR OUR DECISION.

**This is an official notice of the Board and must not be removed or defaced.**

THIS NOTICE MUST REMAIN POSTED FOR 30 CONSECUTIVE DAYS.

DATED this 10th day of FEBRUARY, 1997.

## COURT PROCEEDINGS

**1831-96-R (Court File No. 32/97)** Michael Bauer, Applicant v. Ontario Labour Relations Board, International Brotherhood of Electrical Workers, Local 353, and **B & B Electric Company Division of Electrobauer Systems Limited**, Respondents

Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was "employee" - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application to have judicial review application heard by single judge on grounds of urgency and motion to stay decision of the Board dismissed by Divisional Court

Board decision reported at [1996] OLRB Rep. Nov./Dec. 907.

*Ontario Court (General Division) Divisional Court, Southey J., February 3, 1997.*

**Southey J. (endorsement):** It is important that applications of this nature be heard by a full panel, unless the case is one of urgency and it can be shown that the necessary delay is likely to involve a failure of justice. This does not appear to me to be such a case, particularly since this application may be heard by a full panel in March or April. The application will be transferred to the Divisional Court.

Costs reserved to the panel hearing the application.

This is not a case in which there should be a stay.

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**2603-95-R (Court File No. 568/96)** Corporation of the City of Toronto, Applicant v. Canadian Union of Public Employees, Local 79 and the Ontario Labour Relations Board; and R.O. MacDowell, Chair; and H. Peacock, Board Member; and J.A. Rundle, Board Member, Respondents

Certification - Evidence - Judicial Review - Practice and Procedure - Union winning representation vote but employer asserting that certificate should not issue - Employer submitting that Board mistakenly determined that there was appearance of more than 40% union support and that vote should not have been directed - Board rejecting employer's argument and affirming its practice under Bill 7 of looking only at information provided by union with its application

**when determining existence of appearance of 40% support - Board also explaining its inclination, where possible, to count ballots so that “quick votes” under Bill 7 are followed by quick results - Certificate issuing - Application for judicial review dismissed by Divisional Court**

Board decision reported at [1996] OLRB Rep. July/Aug. 552.

*Ontario Court (General Division) (Divisional Court), Southey, Keenan and Sharpe JJ., January 30, 1997.*

**Southey J. (orally):** Despite the able and thorough submissions of Mr. McDermott, it is unnecessary for us to call on counsel for the respondent. We are unable to accept the submission of Mr. McDermott that the decision by the Board as to what it would consider in making its determination under s.8(2) of the statute, is a question of jurisdiction. The Board clearly had jurisdiction to decide whether a representation vote would be taken, and in doing so its function was to interpret the relevant sections of the Act.

In making this decision we have in mind the warnings that have been given in a number of decisions of the Supreme Court of Canada, that courts should not be overly anxious to determine that a question is a question of jurisdiction.

The decision of the Board was that it should consider only the material filed with it by the Union in making its determination under s.8(2). Although the Board was required to make a determination under s.8(2), its determination was only as to the appearance of whether 40% or more of the individuals in the bargaining unit proposed in the application for certification were members of the Union. There is no express provision in s.8 requiring the Board to receive the submission of the employer on this question. On the other hand, there is the express provision in s.8(4) that the Board shall not hold a hearing when making its decision.

The test in determining whether the Board's decision can be set aside by this court, is whether the Board gave to the provisions of the statute an interpretation that was patently unreasonable. The factum of counsel for the Union contains a passage from the decision of the Supreme Court of Canada in *Canadian Broadcasting Corporation v. Canada Labour Relations Board et al* (1995) 121 D.L.R. (4th) 385 at p. 408 that should be borne in mind. The quotation from the decision of Mr. Justice Iacobucci is:

When deciding whether the decision of a tribunal is patently unreasonable, the interpretation of its constating legislation will not be disturbed if the approach taken by the tribunal is a reasonable one and the meaning given is one which the words of the statute can reasonably bear. Statutory language is often ambiguous and open to differing interpretations. It is, therefore, for good reason that the courts will defer to the definition favoured by the tribunal, which can bring to bear on the determination its specialized expertise and knowledge of the overall statutory framework within which the provision operates.

We are not persuaded that the decision of the Board was patently unreasonable and therefore the application must be dismissed with costs payable to the respondent Union. The Board does not ask for costs. We fix the costs of the Union at \$3,000.00. The application 15/97 to set aside a related award is likewise dismissed.







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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING DECEMBER 1996

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Subsequent to Vote

**4081-95-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. 752310 Ontario Ltd., c.o.b. as Loeb Elmvale Acres (Respondent)

Unit: "all employees of 752310 Ontario Ltd. c.o.b. as Loeb Elmvale Acres in the City of Ottawa, save and except department managers and persons above the rank of department manager" (73 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	76
Number of persons who cast ballots	57
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	55
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	28
Number of ballots segregated and not counted	2
Number of names of persons on revised voters' list	61
Number of persons who cast ballots	47
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	47
Number of ballots marked in favour of applicant	38
Number of ballots marked against applicant	9

**0001-96-R:** International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Lopes Drywall & Acoustics Inc. (Respondent) v. Drywall, Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Intervener)

Unit: "all painters and painters' apprentices in the employ of Lopes Drywall & Acoustics Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Lopes Drywall & Acoustics Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (4 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	1

**1763-96-R:** York University Staff Association (Applicant) v. York University (Respondent)

Unit: “all of employees of York University employed within a 20 km radius of Metropolitan Toronto, employed for not more than 24 hours per week and performing office, clerical, laboratory or technical work, save and except managers, persons above the rank of manager, all academic appointees of the University including faculty, teaching staff, and graduate students, all persons employed in a professional capacity, including those employed in the fields of engineering, accounting, library science, medicine and nursing, all persons employed in student counselling in the classifications of counsellor, senior counsellor, counselling officer, student advisor, program supervisor, project supervisor and project associate, all persons paid from other than Operating or Ancillary funds, all persons employed in the Department of Human Resources, and all persons employed outside of the department in the classification of personnel co-ordinator, office manager, personnel assistant and director of accounts and personnel, all persons employed in the offices of the president, vice-presidents, assistant vice- presidents, and associate vice-presidents, employees employed in the offices of the Secretary of the University and Director of Financial Planning in the classification of Assistant, all assistants and administrative assistants to deans, directors, department chairpersons and college masters, all confidential programmers, students employed during the school vacation period, students hired under a work/study programme and all employees covered by subsisting collective agreements” (50 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	43
Number of persons who cast ballots	43
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	34
Number of ballots marked against applicant	9

**1831-96-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. B & B Electric Co. Division of Electrobauer Systems Limited and/or Electrobauer Limited (Respondent)

Unit: “all electricians and electricians' apprentices in the employ of B & B Electric Co. Division of Electrobauer Systems Limited and/or Electrobauer Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of B & B Electric Co. Division of Electrobauer Systems Limited and/or Electrobauer Limited in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman” (7 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	2

**1926-96-R:** Service Employees International Union, Local 204 Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. RoyalCrest Lifecare Group Inc., c.o.b. as Highbourne Lifecare Centre (Respondent)

Unit: “all employees of Highbourne Lifecare Centre in Metropolitan Toronto, save and except registered nurses, physiotherapists, occupational therapists, supervisors, foremen, persons above the rank of supervisor or foreman, office and clerical staff, persons regularly employed for more than 22½ hours per week and all employees already covered by any existing collective agreement” (45 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	84
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	37
Number of ballots marked in favour of applicant	37



**2135-96-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Hy & Zel's The Warehouse Drugstore Ltd. (Respondent)

Unit: "all employees of Hy & Zel's The Warehouse Drugstore Ltd. in the City of Stoney Creek, Ontario, save and except Assistant Store Managers, persons above the rank of Assistant Store Manager, Point of Sale Co-ordinators, Graduate and Undergraduate Pharmacists including Pharmacy Interns and Apprentice Pharmacists" (38 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	33
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	30
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

**2137-96-R:** Practical Nurses Federation of Ontario (Applicant) v. Saint Elizabeth Health Care - Durham Region (Respondent) v. Ontario Nurses' Association (Intervener)

Unit: "all Registered Practical Nurses and Graduate Practical Nurses employed in a nursing capacity by Saint Elizabeth Health Care - Durham Region, in the Region of Durham, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (17 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	1

**2151-96-R:** Service Employees International Union, Local 204, Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Standard Parking of Canada (Respondent)

Unit: "all employees of Standard Parking of Canada in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor and office and clerical" (90 employees in unit)

Number of names of persons on revised voters' list	180
Number of persons who cast ballots	140
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	140
Number of ballots marked in favour of applicant	72
Number of ballots marked against applicant	68

**2268-96-R:** Ontario Liquor Boards Employees' Union (Applicant) v. Ambassador Duty Free Management Services Ltd. c.o.b. as the Ambassador Duty Free Store (Respondent) v. Teamsters, Chauffeurs, Warehousemen And Helpers Union, Local No. 880 (Intervener)

Unit: "all employees of Ambassador Duty Free Management Services Ltd. c.o.b. as The Ambassador Duty Free Store in the City of Windsor, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (73 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	76
Number of persons who cast ballots	67
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	65
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of spoiled ballots	0

Number of ballots marked in favour of applicant	51
Number of ballots marked against applicant	14
Number of ballots segregated and not counted	2

**2276-96-R:** Service Employees Union, Local 183 (Applicant) v. Edgewood Care Centre (Respondent)

Unit: "all employees of Edgewood Care Centre in the city of Vanier save and except supervisors and persons above the rank of supervisor" (49 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	54
Number of persons who cast ballots	45
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	41
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	26
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	4

**2278-96-R:** Canadian Union of Public Employees (Applicant) v. Community Memorial Hospital, Port Perry (Respondent)

Unit: "all employees of the Community Memorial Hospital, Port Perry employed in the Regional Municipality of Durham, save and except supervisors, persons above the rank of supervisor, professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, undergraduate dietitians, student dietitians, physiotherapists, Executive Secretary and persons currently represented by a trade union" (39 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of ballots marked in favour of applicant	23
Number of ballots marked against applicant	2

**2301-96-R:** United Steelworkers of America (Applicant) v. Ontario Store Fixtures Inc. (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local 1072 (Intervener)

Unit: "all employees of Ontario Store Fixtures Inc., in its woodworking division in the Municipality of Metropolitan Toronto and in the area within a fifty (50) mile radius from the Toronto City Hall, save and except supervisors, persons above the rank of supervisors, office and sales staff and students employed during the school vacation period" (590 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	670
Number of persons who cast ballots	535
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	525
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	9
Number of ballots marked in favour of applicant	348
Number of ballots marked in favour of intervener	168
Number of ballots segregated and not counted	10

**2339-96-R:** Ontario Nurses' Association (Applicant) v. Charlotte Eleanor Englehart Hospital (Respondent)

Unit: "all paramedical employees of Charlotte Eleanor Englehart Hospital in the Town of Petrolia save and except department Heads, persons above the rank of department Head and persons in bargaining units for which any trade union held bargaining rights as of November 6, 1996" (20 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	1

**2371-96-R:** Ontario Nurses' Association (Applicant) v. Saint Elizabeth Health Care - Durham Region (Respondent) v. Practical Nurses Federation of Ontario (Intervener)

Unit #1: "all Registered Nurses and Graduate Nurses engaged in a nursing capacity of Saint Elizabeth Health Care - Durham Region in the Regional Municipality of Durham, save and except Program Managers, persons above the rank of Program Manager, Registered Practical Nurses and Graduate Practical Nurses, Home Support Staff, and office and clerical staff" (91 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	104
Number of persons who cast ballots	65
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	54
Number of segregated ballots cast by persons whose names appear on voter's list	11
Number of ballots marked in favour of applicant	52
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	0

Unit #2: "all office and clerical staff of Saint Elizabeth Health Care - Durham Region in the Regional Municipality of Durham save and except Program Managers, persons above the rank of Program Manager, Registered Practical Nurses and Graduate Practical Nurses, Home Support Staff" (91 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	104
Number of persons who cast ballots	65
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	54
Number of segregated ballots cast by persons whose names appear on voter's list	11
Number of ballots marked in favour of applicant	52
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	0

**2396-96-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Hurley Corporation (Respondent)

Unit: "all employees of Hurley Corporation engaged in cleaning services at 300 Adelaide Street East in the Regional Municipality of Metropolitan Toronto, save and except forepersons and persons above the rank of foreperson" (11 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	1

**2409-96-R:** Cement, Lime, Gypsum & Allied Workers Division of International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO-CFL (Applicant) v. United Aggregates Ltd. (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener)



Unit: “all employees of United Aggregates Ltd. engaged in the aggregate production operation at the United Aggregates Ltd. pit in Caledon Township save and except Foreman and Dispatchers, persons above the rank of Foremen and Dispatcher, Laboratory Technicians, Office and Sales staff, students employed during the school vacation period and persons for whom any trade union held bargaining rights as November 15, 1996” (24 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	17
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

**2439-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Acadia Polymers Corp. of Canada (Respondent)

Unit: “all employees of Acadia Polymers Corp. of Canada in the Township of Oldcastle, save and except supervisors, those above the rank of supervisor, office, sales staff and employees employed for not more than 24 hours per week and students employed during the summer vacation” (75 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	73
Number of persons who cast ballots	68
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	66
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	25
Number of ballots segregated and not counted	2

**2442-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Neptunus Canada Limited (Respondent)

Unit: “all employees of Neptunus Canada Limited in the City of St. Catharines save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period” (75 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	66
Number of persons who cast ballots	65
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	65
Number of ballots marked in favour of applicant	33
Number of ballots marked against applicant	32

**2459-96-R:** The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. 1001836 Ontario Ltd., carrying on business as Everest Electrical Contracting (Respondent)

Unit: “all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of 1001836 Ontario Ltd., carrying on business as Everest Electrical Contracting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of 1001836 Ontario Ltd., carrying on business as Everest Electrical Contracting in all sectors of the construction industry in Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships

of Percy and Cramahe and all lands east thereof in the County of Northumberland, and the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	4

**2461-96-R:** Brock University Faculty Association (Unincorporated #2) (Applicant) v. Brock University (Respondent)

Unit: "all employees of Brock University employed as full-time faculty and full-time professional librarians in or out of the City of St. Catharines and the City of Hamilton including: a) full-time teaching staff at the rank of Professor, Associate Professor, Assistant Professor or Lecturer who hold probationary, tenured or limited term appointments including those on renewal leave; b) those who are appointed to teach on a full-time basis, provided such appointees have the primary responsibility for teaching two or more full, or the equivalent of full and half courses in any academic year and who are appointed for a period of at least eight consecutive months; and c) Professional Librarians save and except: a) the President, Vice Presidents, Associate Vice Presidents, Deans, Associate Deans, University Secretary, Registrar, Associate Registrars, University Librarian, Associate University Librarians, Directors of Non-Academic Administrative Departments b) Professional Librarians employed in the Instructional Resources Centres of the Faculty of Education" (328 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	331
Number of persons who cast ballots	264
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	264
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	171
Number of ballots marked against applicant	93
Number of ballots segregated and not counted	0

**2482-96-R:** United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Koch Engineering Company Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Koch Engineering Company Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Koch Engineering Company Ltd. in all sectors of the construction industry in the District of Thunder Bay, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	2

**2493-96-R:** International Brotherhood of Electrical Workers Construction Council of Ontario (Applicant) v. Manfredi Electric Inc. (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Manfredi Electric Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of Manfredi Electric Inc. in all other sectors of the construction industry in

the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman” (7 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	2

**2494-96-R:** United Steelworkers of America (Applicant) v. Windsor Airline Limousine Services Limited o/a Veteran Cab Company and Capital Cab Company (Respondent)

Unit: “all employees of Windsor Airline Limousine Services Limited o/a Veteran Cab company and Capital Cab Company save and except supervisors, persons above the rank of supervisor, dispatcher, call-takers, maintenance staff, office and clerical staff and multi-plate/multi-car owners/lessees” (475 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	432
Number of persons who cast ballots	340
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	324
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	11
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	173
Number of ballots marked against applicant	149
Number of ballots segregated and not counted	16

**2524-96-R:** International Brotherhood of Electrical Workers, Construction Council of Ontario (Applicant) v. Chapleau Electric (Respondent)

Unit: “all electricians and electricians' apprentices in the employ of Chapleau Electric in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of Chapleau Electric in all sectors of the construction industry in the Township of Strathearn, Panet, Cochrane, Caouette, Chapleau, Gallagher, Caverley, Chappise, Daoust in the District of Sudbury (surrounding Chapleau), excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (7 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	3

**2550-96-R:** United Steelworkers of America (Applicant) v. Society of St. Vincent de Paul (Respondent)

Unit: “all employees of Society of St. Vincent de Paul, Toronto Central Council at its Rendu House and Annex in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor and office and clerical staff” (30 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of segregated ballots cast by persons whose names appear on voter's list	1



Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	1

**2552-96-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Westview Electric Contractors Inc. (Respondent)

Unit: "all journeymen electricians and electricians' apprentices in the employ of Westview Electric Contractors Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen electricians and electricians' apprentices in the employ of Westview Electric Contractors Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (12 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	7
Number of segregated ballots cast by persons whose names appear on voters' list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	3

**2682-96-R:** Canadian Union of Public Employees (Applicant) v. Community Living - South Muskoka (Respondent)

Unit: "all employees of Community Living - South Muskoka employed as para-professional support workers, save and except bookkeeper, persons above the rank of bookkeeper, and persons for whom any trade union held bargaining rights on November 26, 1996" (9 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of ballots marked in favour of applicant	11

**2726-96-R:** United Steelworkers of America (Applicant) v. Saxum Canada Incorporated (Respondent)

Unit: "all employees of Saxum Canada Inc. in the City of Brampton, save and except supervisors and persons above the rank of supervisor" (39 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	39
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	37
Number of ballots marked in favour of applicant	22
Number of ballots marked against applicant	15

**2727-96-R:** Bakery, Confectionery and Tobacco Workers' International Union (Applicant) v. Dwyer Foods (Respondent)

Unit: "all cafeteria employees of Dwyer Foods at Imperial Tobacco Ltd. at 519 Johns Street North in the Town of Aylmer, save and except supervisors and persons above the rank of supervisor" (9 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	10
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Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	1

**2730-96-R:** London and District Service Workers' Union, Local 220 SEIU, CLC, AFL, CIO (Applicant) v. Versa-Care Centre, Lambeth (Respondent)

Unit: "all Registered and Graduated Nurses employed in a nursing capacity by Versa-Care Limited at Versa-Care Centre/Lambeth in the Township of Delaware save and except Head Nurse, persons above the rank of Head Nurse, office and clerical staff and persons for whom any trade union held bargaining rights as of November 27, 1996" (8 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	3

**2737-96-R:** Power Workers' Union CUPE Local 1000 - CLC (Applicant) v. Whitby Hydro Electric Commission (Respondent)

Unit: "all employees of Whitby Hydro Electric Commission, save and except supervisors, those above the rank of supervisor, Commission Secretary/Human Resources Officer and any employees in bargaining units from whom any trade union held bargaining rights at the date of application, November 28, 1996" (18 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	0

### Applications for Certification Dismissed Without Vote

**0074-95-R; 0113-95-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Applicant) v. Famous Players Inc. (Respondent)

### Applications for Certification Dismissed Subsequent to Vote

**1044-96-R:** International Union of Bricklayers and Allied Craftsmen, Local 10 (Applicant) v. Bradleigh Construction Limited (Respondent)

Unit: "all journeymen and apprentice bricklayers, stonemasons, plasterers and improvers in the employ of Bradleigh Construction Limited in the industrial, commercial and institutional sector of the construction industry"

in the Province of Ontario and all journeymen and apprentice bricklayers, stonemasons, plasterers and improvers in the employ of Bradleigh Construction Limited in all other sectors in the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

**2173-96-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Mason Homes Limited (Respondent)

Unit: "all construction labourers in the employ of Mason Homes Limited in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	4
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

**2471-96-R:** United Steelworkers of America (Applicant) v. Previc Distribution Network (Ontario) Ltd. (Respondent)

Unit: "all employees of Previc Distribution Network (Ontario) Ltd. in the Municipality of Metropolitan Toronto save and except Manager and persons above the rank of Manager" (7 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	5

**2531-96-R:** United Steelworkers of America (Applicant) v. Thomas D. Reburn Ltd. c.o.b. as Leon's Furniture Ltd. (Respondent)

Unit: "all employees of Thomas D. Reburn Ltd. c.o.b. as Leon's Furniture Ltd., in the City of Peterborough save and except Store Manager, Operations Manager, Office Manager, and persons above the rank of Store Manager, Operations Manager and Office Manager" (19 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	4

**2543-96-R:** London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Covent Garden Market Corporation (Respondent)

Unit: "all parking lot attendants, regularly employed for not more than 24 hours per week by Covent Garden Market Corporation, at London, Ontario, save and except supervisors, persons above the rank of supervisor, office staff and persons in bargaining units for whom any trade union held bargaining rights as of November 18, 1996" (12 employees in unit)

Number of names of persons on revised voters' list	12
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Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	12

**2604-96-R:** Graphic Communications International Union, Local 100-M (Applicant) v. Print Key Inc. (Respondent)

Unit: "all employees of Print Key Inc. in the City of Mississauga, save and except forepersons, persons above the rank of foreperson, office, clerical and sales staff" (59 employees in unit)

Number of names of persons on revised voters' list	59
Number of persons who cast ballots	59
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	54
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	21
Number of ballots marked against applicant	32
Number of ballots segregated and not counted	5

**2716-96-R:** Service Employees' Union, Local 210 (Applicant) v. Erie Glen Manor (Respondent)

Unit: "all employees of Erie Glen Manor in the Town of Leamington, save and except supervisors, persons above the rank of supervisor, office and clerical employees" (22 employees in unit)

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	28

**2735-96-R:** IWA - Canada (Applicant) v. 903162 Ontario Limited c.o.b. as Fortier Valu-Mart (Respondent)

Unit: "all employees of Fortier Valu-Mart in the Town of Hearst, save and except store manager, persons above the rank of store manager" (66 employees in unit)

Number of names of persons on revised voters' list	67
Number of persons who cast ballots	62
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	59
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	22
Number of ballots marked against applicant	37

**2827-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Sprague Foods Ltd. (Respondent)

Unit: "all warehouse employees of Sprague Foods Ltd., in the City of Belleville, save and except supervisors, persons above the rank of supervisor, office and clerical staff and students employed during the school vacation" (29 employees in unit)

Number of names of persons on revised voters' list	29
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	28
Number of ballots marked in favour of applicant	11

Number of ballots marked against applicant

17

### Applications for Certification Withdrawn

**1570-96-R:** The West Mechanical Inc. Employee Association (Applicant) v. West Mechanical Inc. (Respondent)

**2625-96-R:** Association of Allied Health Professionals: Ontario (Applicant) v. Ontario Cancer Institute/Princess Margaret Hospital (Respondent)

**3117-96-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Resform Construction Ltd. (Respondent)

### APPLICATIONS UNDER SECTION 6 OF BILL 7

**3726-95-R:** Teamsters Local Union 230 affiliated with the International Brotherhood of Teamsters (Applicant) v. Canada Building Materials Company (Respondent) (*Granted*)

### APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**0897-93-R:** Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Florida Drywall Co. Ltd. and T.L.W. Drywall Contractors Ltd. (Respondents) (*Withdrawn*)

**2022-94-R; 2178-94-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Beaver Road Builders Ltd., Tarcon Ltd., R.W. Tomlinson Limited (Respondents); Teamsters Local Union 91 (Applicant) v. Beaver Road Builders Ltd., Tarcon Ltd., R.W. Tomlinson Limited (Respondents) (*Granted*)

**3469-95-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Peter A. Loucks Limited c.o.b. as Trane Service Agency Hamilton, Wabco Standard Trane Inc. c.o.b. as Trane Canada and Wabco Standard Trane Inc. c.o.b. as Trane Toronto (Respondents) (*Withdrawn*)

**0034-96-R:** Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC (Applicant) v. MacLean Group Inc. and Harvey Woods Hosiery Inc. (Respondents) (*Endorsed Settlement*)

**0395-96-R:** International Brotherhood of Painters and Allied Trades, Local Union 1795 (Glaziers) (Applicant) v. King Glass Ltd. and Casey Glass Ltd. (Respondents) (*Granted*)

**0953-96-R:** Labourers International Union of North America, Local 527 (Applicant) v. Eastern Concrete Drilling & Saw Cutting Ltd., Eastern Concrete Services, Denofrio Cutting & Coring, Eastern Concrete Cutting & Coring (Respondents) (*Granted*)

**1165-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 195 (Applicant) v. 1147182 Ontario Limited, c.o.b. as Walker Finishing and 957532 Ontario Limited, c.o.b. as Rustshield Plating (Respondents) v. United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. (Intervener) (*Withdrawn*)

**1233-96-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Acura Forming Limited, Sandro Quadrini carrying on business as Boa-Con Construction (Respondents) (*Withdrawn*)

**1445-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 523 (Applicant) v. Cunningham Foundry & Machine Co. Ltd., Quint Holdings Inc. and ABC Ontario Limited (Respondents) v. Service Employees Union, Local 183 (Intervener) (*Withdrawn*)

**1820-96-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Monopoli Electric Limited and Skymart Electrical Contractor Ltd. (Respondents) (*Granted*)

**1908-96-R:** Sheet Metal Workers' International Association Local 47 (Applicant) v. Servais Sheet Metal Ltd., Shawn Servais, c.o.b. as Serva Sheet Metal (Respondents) (*Granted*)

**2525-96-R:** The United Association of Journeymen and Apprentices of The Plumbing and Pipe Fitting Industry of The United States and Canada, Local 221 (Applicant) v. David Magee, carrying on business as K & K Plumbing & Heating and Karen Magee, carrying on business as Erneston Plumbing and Heating (Respondents) (*Withdrawn*)

## SALE OF A BUSINESS

**0897-93-R:** Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Florida Drywall Co. Ltd. and T.L.W. Drywall Contractors Ltd. (Respondents) (*Withdrawn*)

**2022-94-R; 2178-94-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Beaver Road Builders Ltd., Tarcon Ltd., R.W. Tomlinson Limited (Respondents); Teamsters Local Union 91 (Applicant) v. Beaver Road Builders Ltd., Tarcon Ltd., R.W. Tomlinson Limited (Respondents) (*Granted*)

**3469-95-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Peter A. Loucks Limited c.o.b. as Trane Service Agency Hamilton, Wabco Standard Trane Inc. c.o.b. as Trane Canada and Wabco Standard Trane Inc. c.o.b. as Trane Toronto (Respondents) (*Withdrawn*)

**0034-96-R:** Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC (Applicant) v. MacLean Group Inc. and Harvey Woods Hosiery Inc. (Respondents) (*Endorsed Settlement*)

**0395-96-R:** International Brotherhood of Painters and Allied Trades, Local Union 1795 (Glaziers) (Applicant) v. King Glass Ltd. and Casey Glass Ltd. (Respondents) (*Granted*)

**0953-96-R:** Labourers International Union of North America, Local 527 (Applicant) v. Eastern Concrete Drilling & Saw Cutting Ltd., Eastern Concrete Services, Denofrio Cutting & Coring, Eastern Concrete Cutting & Coring (Respondents) (*Granted*)

**1233-96-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Acura Forming Limited, Sandro Quadrini carrying on business as Boa-Con Construction (Respondents) (*Withdrawn*)

**1445-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 523 (Applicant) v. Cunningham Foundry & Machine Co. Ltd., Quint Holdings Inc. and ABC Ontario Limited (Respondents) v. Service Employees Union, Local 183 (Intervener) (*Withdrawn*)

**1820-96-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Monopoli Electric Limited and Skymart Electrical Contractor Ltd. (Respondents) (*Granted*)

**1908-96-R:** Sheet Metal Workers' International Association Local 47 (Applicant) v. Servais Sheet Metal Ltd., Shawn Servais, c.o.b. as Serva Sheet Metal (Respondents) (*Granted*)

**2525-96-R:** The United Association of Journeymen and Apprentices of The Plumbing and Pipe Fitting Industry of The United States and Canada, Local 221 (Applicant) v. David Magee, carrying on business as K & K Plumbing & Heating and Karen Magee, carrying on business as Erneston Plumbing and Heating (Respondents) (*Withdrawn*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**1779-96-R:** Employees of Commercial Laundry and Linen Supply Ltd. (Applicant) v. International Brotherhood of Teamsters Local 847 (Respondent) v. Commercial Laundry & Linen Supply Ltd. (Intervener) (*Withdrawn*)



**2043-96-R:** T. Beck Mechanical Services Ltd. (Applicant) v. The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of United States and Canada, Local 46 (Respondent) v. The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States of Canada (Intervener) (*Dismissed*)

**2162-96-R:** Sharon Zinck and other Employees of Valle Foam Industries (1995) Inc. (Applicant) v. Union of Needletrades, Industrial and Textile Employees Local 1167 (Respondent) v. Domfoam Division of Valle Foam Industries (1995) Inc. (Intervener)

Unit: "all employees of Valle Foam Industries (1995) Inc. in the City of Brampton, Ontario, save and except foremen and foreladies, persons above the rank of foreman and foreladies, office and sales staff, persons not regularly employed for not more than 24 hours per week, and students employed during the school vacation period" (99 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	97
Number of persons who cast ballots	92
Number of ballots marked in favour of respondent	44
Number of ballots marked against respondent	48

**2187-96-R:** Rick Brooks (Applicant) v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Respondent) v. Famous Players Inc. (Intervener) (*Dismissed*)

**2225-96-R:** Carl Thomas, on his own behalf and on behalf of a group of employees of Famous Players Inc. (Applicant) v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Respondent) v. Famous Players Inc. (Intervener)

Unit: "all employees of Famous Players Inc. at its Rideau Cinemas in the City of Ottawa, save and except Relief Managers, Assistant Managers, and persons above the rank of Assistant Manager and those persons in the bargaining units for whom I.A.T.S.E. Local 173 holds bargaining rights" (18 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	18

**2227-96-R:** Hugues Tremblay, on his own behalf and on behalf of a group of employees of Famous Players Inc. (Applicant) v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of The United States and Canada (Respondent) v. Famous Players Inc. (Intervener)

Unit: "all employees of Famous Players Inc. at its Capitol Square Cinemas in the City of Ottawa, save and except Relief Managers, Assistant Managers, and persons above the rank of Assistant Manager and those persons in the bargaining units for whom I.A.T.S.E. Local 173 holds bargaining rights" (13 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked against respondent	9

**2293-96-R:** Michael Williamson (Applicant) v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Respondent) v. Famous Players Inc. (Intervener)

Unit: "all employees of Famous Players Inc. at Jackson Square Cinemas in the City of Hamilton, save and except Relief Managers and persons above the rank of Relief Manager, and save and except those persons in the bargaining unit for whom I.A.T.S.E. Local 173 and 303 holds bargaining rights" (22 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	22
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Number of persons who cast ballots	18
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	18
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	18

**2297-96-R:** Ray Joudrey (Applicant) v. Teamsters Local Union 419 (Respondent) v. J. Patrick Higgins Enterprises Inc. (Intervener)

Unit: "all employees of the company in the Municipality of Metropolitan Toronto, save and except Department Managers and persons above the rank of Department Manager" (85 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	89
Number of persons who cast ballots	78
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	77
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of respondent	22
Number of ballots marked against respondent	55
Number of ballots segregated and not counted	1

**2319-96-R:** Joe Martin (Applicant) v. A.C.T.W.U. (Respondent) v. Permark Inc. (Intervener)

Unit: "all employees of Permark Inc., in the Municipality of Metropolitan Toronto, save and except forepersons, persons above the rank of forepersons, office and sales staff, and students employed during the school vacation period" (13 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	12

**2408-96-R:** Michael Ford (Applicant) v. Canadian Security Union (Respondent) v. Stinson Security Services Ltd. (Intervener)

Unit: "all security guards in the employ of Stinson Security Services Limited at White Oaks Mall, London, Ontario, save and except supervisors" (11 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	6

**2418-96-R:** Wendell Baptiste (Applicant) v. Teamsters Local Union 938 (Respondent) v. Skanna Systems Investigations Inc. (Intervener)

Unit: "all employees of Skanna Systems Investigations Inc. in the Municipality of Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor" (18 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	12

Number of ballots marked against respondent	5
Number of ballots segregated and not counted	0

**2523-96-R:** Susan Godel (Applicant) v. United Steelworkers of America (Respondent) v. A.S.M. Dispensaries Limited (Intervener)

Unit: "all employees of A.S.M. Dispensaries Limited c.o.b. as Shoppers Drug Mart at 3003 Danforth Avenue in the Municipality of Metropolitan Toronto save and except Assistant Merchandise Manager, Pricing Systems Manager, Head Cashier, Head Beauty Advisor, persons above the rank of Assistant Merchandise Manager, Pricing Systems Manager, Head Cashier and Head Beauty Advisor, Pharmacists, office and clerical staff." (50 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	54
Number of persons who cast ballots	47
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names do not appear on voters' list	15
Number of ballots marked in favour of respondent	5
Number of ballots marked against respondent	27
Number of ballots segregated and not counted	15

**2551-96-R:** Susan Hummell-Mollard (Applicant) v. Retail Wholesale Canada Canadian Service Sector, Division of the United Steelworkers of America Local 440 (Respondent) v. Mossman's Appliance Parts Ltd. (Intervener)

Unit: "all employees of Mossman's Appliance Parts Limited in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisors, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period, office and outside salespersons" (17 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	17
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	15

**2574-96-R:** Maria Rozon (Applicant) v. Hospitality, Commercial and Service Employees Union, Local 73, chartered by Hotel Employees Restaurant Employees International Union (Respondent) (*Dismissed*)

**2602-96-R:** Brenda Vader (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) v. The Corporation of the Township of Faraday (Intervener)

Unit: "all employees of the Corporation of the Township of Faraday, save and except Road Superintendent and persons above the rank of Road Superintendent." (3 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	2

**2732-96-R:** Anthony Villanueva (Applicant) v. United Steelworkers of America (Respondent) v. Goshen Rubber of Canada, Ltd. (Intervener)

Unit: "all employees at the city of Brampton, Ontario save and except foreman, persons above the rank of foreman, office clerical and sales staff, and students employed during the school vacation period" (14 employees in unit) (*Granted*)



**2845-96-R:** Joe Salvatore et al (Applicant) v. United Steelworkers of America (Respondent) v. Can Mar Manufacturing Inc. (Intervener) (*Granted*)

**2863-96-R:** C.A.R.V. Masonry Inc. (Applicant) v. Labourers' International Union of North America, Ontario Provincial District Council on its own behalf and on behalf of Labourers' International Union of North America, Locals 625 & 1059 (Respondent) (*Withdrawn*)

## REFERRAL FROM MINISTER (SECTION 109)

**2086-96-M:** Amalgamated Transit Union, Local 107 (Applicant) v. Hamilton Street Railway Company (Respondent) (*Terminated*)

**2210-96-M:** Labourers' International Union of North America, Local 1059 (Applicant) v. The John Hayman & Sons Company Limited (Respondent) (*Granted*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

**2269-96-U:** The Dufferin-Peel Roman Catholic Separate School Board (Applicant) v. Ontario English Catholic Teachers' Association, Jeff Heximer and Rita Demcheson (Respondents) (*Withdrawn*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)

**2681-96-U:** Comstock Canada (Applicant) v. Ty Ferencsik and Ivan Roy (Respondent) (*Granted*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL LOCKOUT

**3082-96-U:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Municipality of Metropolitan Toronto (Respondent) (*Dismissed*)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**0602-95-U; 0608-95-U; 0609-95-U; 0610-95-U; 0611-95-U:** Lourenco Dinis (Applicant) v. Sheet Metal Workers' International Association, Local 537 (Respondent) v. Julian Roofing (Ontario) Limited (Intervener); Manuel Faria (Applicant) v. Sheet Metal Workers' International Association, Local 537 (Respondent) v. Julian Roofing (Ontario) Limited (Intervener); John Silva (Applicant) v. Sheet Metal Workers' International Association, Local 537 (Respondent) v. Julian Roofing (Ontario) Limited (Intervener); Jose Carvalho (Applicant) v. Sheet Metal Workers' International Association, Local 537 (Respondent) v. Julian Roofing (Ontario) Limited (Intervener); Vince da Costa (Applicant) v. Sheet Metal Workers' International Association, Local 537 (Respondent) v. Julian Roofing (Ontario) Limited (Intervener) (*Terminated*)

**2541-95-U:** Donald Roy (Applicant) v. United Steelworkers of America (Respondent) v. Pinkerton's of Canada Limited (Intervener) (*Dismissed*)

**3042-95-U; 3044-95-U; 3204-95-U:** International Union of Bricklayers and Allied Craftsmen, Local 5 (Applicant) v. C.A.R.V. Masonry Inc., Carmello De Cicco and Rita De Cicco (Respondent); Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen and International Union of Bricklayers and Allied Craftsmen, Local 5 (Applicant) v. C.A.R.V. Masonry Inc., Carmello De Cicco, EM-95 Construction Ltd., Mrs. Rita De Cicco (Respondents) v. Ontario Provincial District Council (Intervener); Labourers' International Union of North America, Ontario Provincial District Council on its own behalf and on behalf of Labourers' International Union of North America, Local's 625 and 1059 (Applicant) v. C.A.R.V. Masonry Inc. and EM-95 Construction Ltd. and Carmelo DeCicco, Rita De Cicco (Respondents) (*Endorsed Settlement*)

**3333-95-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Interior Truck Trim (Eastern) Ltd. (Respondent) (*Withdrawn*)

**4025-95-U:** Mary Louise Bat Hayim (Applicant) v. Canadian Union of Public Employees, Local 3903 (Respondent) v. York University (Intervener) (*Withdrawn*)

**4103-95-U:** International Brotherhood of Electrical Workers Local 1788 (Applicant) v. Electrical Power Systems Construction Association, Ontario Hydro, Neil Donnelly, and Richard Sogawa (Respondents) (*Withdrawn*)

**4232-95-U:** Assunta Young (Applicant) v. The Office and Professional Employees' International Union and its Local 219, and James River-Marathon, Ltd. (Respondents) (*Withdrawn*)

**0085-96-U:** Edwin Micallef (Applicant) v. CAW Local 29 (Respondent) (*Dismissed*)

**0123-96-U:** Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC (Applicant) v. Maclean Group Inc., Harvey Woods Hosiery Inc. and David Robichaud (Respondents) (*Endorsed Settlement*)

**0152-96-U:** Joseph B. Kelly (Applicant) v. United Food & Commercial Workers Union, Local #743 (Respondent) (*Withdrawn*)

**0259-96-U; 0423-96-U:** Phyl Sharratt, Wendy Cryne, Lyne Powell (Applicant) v. Canadian Union of Public Employees Local 1750 (Respondent); Donna M. Madore (Applicant) v. CUPE Local 1750 and The Worker's Compensation Board (Respondents) (*Withdrawn*)

**0327-96-U:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. J.G. Barrette Electric Ltd. (Respondent) (*Withdrawn*)

**0535-96-U:** Mo Meziti (Applicant) v. CUEW, Local 3903 (Respondent) v. York University (Intervener) (*Withdrawn*)

**0783-96-U:** Michael Toth (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 27 and Hardrock Forming Co. (Respondents) (*Dismissed*)

**1164-96-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 195 (Applicant) v. 1147182 Ontario Limited (c.o.b. as Walker Finishing) and 957532 Ontario Limited (c.o.b. as Rustshield Plating) (Respondents) v. United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. (Intervener) (*Withdrawn*)

**1303-96-U:** Ontario Secondary School Teachers' Federation, District 27 (Applicant) v. Simcoe County Roman Catholic Separate Board (Respondent) (*Withdrawn*)

**1304-96-U:** Ontario Secondary School Teachers Federation, District 27 (Applicant) v. The Simcoe County Roman Catholic Separate School Board (Respondent) (*Withdrawn*)

**1444-96-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 523 (Applicant) v. Cunningham Foundry & Machine Co. Ltd., Quint Holdings Inc. and ABC Ontario Limited (Respondents) v. Service Employees Union, Local 183 (Intervener) (*Withdrawn*)

**1489-96-U:** Mr. Vince de Paepe (Applicant) v. International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Respondent) (*Withdrawn*)

**1784-96-U:** Earl J. Wright (Applicant) v. Navistar International Corporation of Chatham (Respondent) (*Withdrawn*)

**1823-96-U:** Robert Lessard (Applicant) v. United Steelworkers of America (Respondent) (*Dismissed*)

**1853-96-U:** Robert Walpole (Applicant) v. Ontario Council of the International Brotherhood of Painters and Allied Trades, International Brotherhood of Painters and Allied Trades - Local Union 1795 Glaziers, Signatory Employers/Contractors (Respondents) (*Withdrawn*)

**1900-96-U:** The Ontario Nurses' Association (Applicant) v. North Park Nursing Home Ltd. (Respondent) (*Withdrawn*)

**1911-96-U:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Olympus Plastics Ltd. (Respondent) (*Terminated*)

**1973-96-U:** Kevin Bake, Tom Beresford, Bill Irwin (Applicant) v. Labourers International Union (Local 1059) and Domclean Ltd. (Respondents) (*Withdrawn*)

**2087-96-U:** Gino Molinaro (Applicant) v. CAW Canada Local 222 and (Respondent) v. General Motors of Canada Limited (Intervener) (*Dismissed*)

**2105-96-U:** Ontario Nurses' Association (Applicant) v. MCI Medical Clinics Inc. (Respondent) (*Withdrawn*)

**2220-96-U:** John P. Rahelley (Applicant) v. Teamsters Local Union 419 (Respondent) (*Withdrawn*)

**2270-96-U:** The Dufferin-Peel Roman Catholic Separate School Board (Applicant) v. Ontario English Catholic Teachers' Association, Jeff Heximer and Rita Demsheson (Respondents) (*Withdrawn*)

**2321-96-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Corma Inc. (Respondent) (*Withdrawn*)

**2336-96-U:** International Union of Operating Engineers, Local 793 (Applicant) v. DeKay Construction (1987) Limited (Respondent) (*Endorsed Settlement*)

**2400-96-U:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Proto Electric Contracting Inc. (Respondent) (*Withdrawn*)

**2413-96-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Teledyne Specialty Equipment Metal Products (Respondent) (*Withdrawn*)

**2559-96-U:** Bruno Raso (Applicant) v. Ontario English Catholic Teachers' Association (O.E.C.T.A.) (Respondent) (*Dismissed*)

**2662-96-U:** Communications, Energy and Paperworkers Union of Canada Local 1112 (Applicant) v. Paperboard Industries Corporation Toronto Mill Division (Respondent) (*Withdrawn*)

**2815-96-U:** Efreem Fssahaye (Applicant) v. Louis Wronzberg (Respondent) (*Dismissed*)

**2954-96-U:** Nemesio Botelho (Applicant) v. Correct Maintenance Limited (Respondent) (*Dismissed*)

**3013-96-U:** Wendy Dakin (Applicant) v. Weetabix of Canada (Respondent) (*Dismissed*)

**3037-96-U:** Raymond Ross (Applicant) v. Canada Building Materials Company (Respondent) (*Dismissed*)

**3076-96-U:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Municipality of Metropolitan Toronto (Respondent) (*Dismissed*)

## APPLICATION FOR INTERIM ORDER

**2499-96-M:** Alonso Aragon (Applicant) v. Toronto Transit Commission, Superintendent Ken Maddison, Superintendent B. Tyrell, Assistant Superintendent T. Galea and Assistant Superintendent D. Barr (Respondent) (*Dismissed*)



## APPLICATIONS FOR RELIGIOUS EXEMPTION

**2813-95-M:** Helen M. Northcott (Applicant) v. The Practical Nurses Federation of Ontario and Victorian Order of Nurses Metro Branch (Respondents) (*Withdrawn*)

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**3154-95-OH:** Patricia Musty (Applicant) v. Meridian Magnesium Products Limited (Respondent) (*Dismissed*)

**2095-96-OH; 2096-96-OH:** Beverly MacLean (Applicant) v. Ruth's Chris Steak House (Respondent); Michelle Ringuette (Applicant) v. Ruth's Chris Steak House (Respondent) (*Withdrawn*)

**2274-96-OH:** Edward Joseph Scott (Applicant) v. Munck Cranes Inc. (Respondent) (*Withdrawn*)

**2486-96-OH:** Daneshwar Singh (Applicant) v. N.B.S. Technologies Inc. (Respondent) (*Withdrawn*)

**2487-96-OH:** Nancy Fera (Applicant) v. C.E. Jamieson & Company Limited (Respondent) (*Withdrawn*)

## CONSTRUCTION INDUSTRY GRIEVANCES

**0896-93-G:** Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Florida Drywall Co. Ltd. and T.L.W. Drywall Contractors Ltd. (Respondents) (*Withdrawn*)

**2020-94-G; 2176-94-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Beaver Road Builders Ltd., Tarcon Ltd., R.W. Tomlinson Limited (Respondents); Teamsters Local Union 91 (Applicant) v. Beaver Road Builders Ltd., Tarcon Ltd., R.W. Tomlinson Limited (Respondents) (*Granted*)

**2021-94-G; 2177-94-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Beaver Road Builders Ltd., Tarcon Ltd., R.W. Tomlinson Limited (Respondents); Teamsters Local Union 91 (Applicant) v. Beaver Road Builders Ltd., Tarcon Ltd., R.W. Tomlinson Limited (Respondents) (*Withdrawn*)

**0372-95-G; 3295-95-G:** Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Torino Drywall Company Ltd. (Respondent); Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Torino Drywall Co. Ltd. (Respondent) (*Dismissed*)

**3046-95-G; 3203-95-G; 3689-95-G; 3691-95-G:** Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen and International Union of Bricklayers and Allied Craftsmen, Local 6 (Applicant) v. C.A.R.V. Masonry Inc. and EM-95 Construction Ltd. (Respondents); Labourers' International Union of North America, Ontario Provincial District Council on its own behalf and on behalf of Labourers' International Union of North America, Local's 625 and 1059 (Applicant) v. C.A.R.V. Masonry Inc. and EM-95 Construction Ltd. (Respondents); Labourers' International Union of North America, Local 1059 (Applicant) v. C.A.R.V. Masonry Inc. and EM-95 Construction Ltd. (Respondents) (*Endorsed Settlement*)

**1232-96-G:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Acura Forming Limited, Boa-Con Construction (Respondents) (*Withdrawn*)

**1572-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Norstar Mechanical Ltd. (Respondent) (*Granted*)

**1657-96-G:** International Brotherhood of Painters and Allied Trades, Local 1891 (Applicant) v. Lisi Brothers Construction Ltd. (Respondent) (*Withdrawn*)

**1875-96-G:** The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Network Inc. (Respondent) (*Withdrawn*)

**1938-96-G:** United Brotherhood of Carpenters & Joiners of America Local 249 (Applicant) v. Central Ontario Drywall & Acoustic Inc. (Respondent) (*Granted*)

**2165-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Andrew Paving & Engineering Limited (Respondent) (*Granted*)

**2168-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Pit-On Construction Co. Ltd. (Respondent) (*Granted*)

**2226-96-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. Process Mechanical Installations (Respondent) (*Withdrawn*)

**2252-96-G; 2255-96-G; 2256-96-G; 2257-06-G; 2258-96-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Univex (Canada) Limited (Respondent) (*Withdrawn*)

**2338-96-G; 2352-96-G:** International Union of Operating Engineers, Local 793 (Applicant) v. DeKay Construction (1987) Limited (Respondent) (*Endorsed Settlement*)

**2356-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. York Concrete Forming (Respondent) (*Granted*)

**2395-96-G:** International Brotherhood of Painters & Allied Trades, Local Union 1819 (Applicant) v. Balkan Glass & Aluminum Inc. (Respondent) (*Granted*)

**2446-96-G:** Sheet Metal Workers' International Association, Local 537 (Applicant) v. Trio Roofing Ltd., Trio Roofing Systems Inc. (Respondents) (*Granted*)

**2502-96-G:** International Union of Operating Engineers, Local 793 (Applicant) v. 657572 Ontario Inc. c.o.b. as Double "S" Construction (Respondent) (*Granted*)

**2519-96-G:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Industrial Commercial and Contracting (Sault) Ltd. (Respondent) (*Withdrawn*)

**2534-96-G:** Labourers' International Union of North America, Local 1036 (Applicant) v. Lebrun Northern Contracting Ltd. (Respondent) (*Endorsed Settlement*)

**2562-96-G:** International Union of Operating Engineers, Local 793 (Applicant) v. 806519 Ontario Limited O/A Trigger Contracting (Respondent) (*Granted*)

**2566-96-G:** Construction Workers Local 53, CLAC (Applicant) v. 1091050 Ontario Ltd. c.o.b. Competitors General Contractors (Respondent) (*Granted*)

**2595-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Econo Excavating & Paving (1991) Co. Ltd. (Respondent) (*Granted*)

**2610-96-G:** The United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Ronco Interior Systems Inc. (Respondent) (*Granted*)

**2611-96-G:** The United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Nation Drywall Ltd. (Respondent) (*Terminated*)

**2622-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Wasero Construction (1991) Ltd. (Respondent) (*Granted*)

**2623-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Sam Rabito Construction Limited (Respondent) (*Granted*)

**2661-96-G:** International Union of Bricklayers and Allied Craftworkers Local #20 Ontario (Applicant) v. Vanlonden Masonry Ltd. (Respondent) (*Granted*)

**2664-96-G:** International Union of Bricklayers & Allied Craftsmen, Local 12 (Applicant) v. Village Contractors Limited (Respondent) (*Endorsed Settlement*)

**2688-96-G:** Labourers' International Union of North America, Local 1036 (Applicant) v. Walter & SCI Construction Canada Ltd. (Respondent) (*Withdrawn*)

**2693-96-G:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Modern Wood Fabricators (MWF) Inc. (Respondent) (*Granted*)

**2710-96-G:** United Brotherhood of Carpenters and Joiners of America Local 446 (Applicant) v. Walter & SCI Construction (Canada) Ltd. (Respondent) (*Withdrawn*)

**2738-96-G:** International Union of Bricklayers and Allied Craftsmen, Local 5 (Applicant) v. Provincial Masonry Group and all of its affiliated or subsidiary companies including 1116731 Ontario Inc., 1106102 Ontario Inc., 1025213 Ontario Inc., Base Construction Inc., 825153 Ontario Inc., AB Tile Ltd., Provincial Masonry Inc., Provincial Masonry Group Inc., 1000555 Ontario Inc., 1000554 Ontario Inc., 1025215 Ontario Inc., 1047421 Ontario Inc. and 980368 Ontario Inc. (Respondent) (*Granted*)

**2739-96-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Provincial Masonry Group and all of its affiliated or subsidiary companies including 1116731 Ontario Inc., 1106102 Ontario Inc., 1025213 Ontario Inc., Base Construction Inc., 825153 Ontario Inc., AB Tile Ltd., Provincial Masonry Inc., Provincial Masonry Group Inc., 1000555 Ontario Inc., 1000554 Ontario Inc., 1025215 Ontario Inc., 1047421 Ontario Inc. and 980368 Ontario Inc. (Respondent) (*Granted*)

**2740-96-G:** Labourers' International Union of North America, Local 1089 (Applicant) v. Provincial Masonry Group and all of its affiliated or subsidiary companies including 1116731 Ontario Inc., 1106102 Ontario Inc., 1025213 Ontario Inc., Base Construction Inc., 825153 Ontario Inc., AB Tile Ltd., Provincial Masonry Group Inc., 1000555 Ontario Inc., 1000554 Ontario Inc., 1025215 Ontario Inc., 1047421 Ontario Inc. and 980368 Ontario Inc. (Respondent) (*Granted*)

**2752-96-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Bennett & Wright Inc. (Respondent) (*Endorsed Settlement*)

**2766-96-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Rockmount Construction & Masonry 860407 Ontario Limited (Respondent) (*Endorsed Settlement*)

**2767-96-G:** Labourers' International Union of North America, Local 506 (Applicant) v. 1000060 Ontario Ltd. c.o.b. as COBI Concrete Sawing (Respondent) (*Endorsed Settlement*)

**2848-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Mar-Drain Ltd. (Respondent) (*Endorsed Settlement*)

**2860-96-G:** A Council of Trade Unions Representing Labourers International Union of North America, Local 183 and Teamsters Local Union 230 (Applicant) v. Con-Drain Company (1983) Ltd. (Respondent) (*Granted*)

**2862-96-G:** International Association of Bridge, Structural Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Raymond Steel Ltd. (Respondent) (*Withdrawn*)

**2874-96-G:** Marble, Tile and Terrazzo Union Local 31 on its own behalf and on behalf of the Trustees of the Marble, Tile and Terrazzo Union Local 31 Pension and employees benefit Trust Funds and the OPC Vacation Pay Trust Fund (Applicant) v. Seamless Industrial Floor Coatings Ltd. (Respondent) (*Granted*)

**2875-96-G:** Sheet Metal Workers' International Association Local Union No. 285 (Applicant) v. Custom Gas Heating Limited o/a National Heating & Air Conditioning Sales (Respondent) (*Granted*)



**2935-96-G:** Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. 4 Star Drywall Ltd. (Respondent) (*Granted*)

**2936-96-G:** Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Marel Contractors (Respondent) (*Withdrawn*)

**2943-96-G:** Ontario Council of the International Brotherhood of Painters and Allied Trades, Local 1671, (Applicant) v. Conrad Painting Limited (Respondent) (*Endorsed Settlement*)

**2944-96-G:** Ontario Council of the International Brotherhood of Painters and Allied Trades, Local 1904 (Applicant) v. Conrad Painting Limited (Respondent) (*Endorsed Settlement*)

**3034-96-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. The John Hayman & Sons Company Limited (Respondent) (*Endorsed Settlement*)

## APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**3412-93-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Applicant) v. Famous Players Inc. (Respondent) (*Granted*)

**3467-93-R; 3182-94-R:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Applicant) v. Famous Players Inc. (Respondent) (*Dismissed*)

**3415-95-OH; 0057-96-U:** William J. Viveen (Applicant) v. Babcock & Wilcox Industries Ltd. (Respondent); William J. Viveen (Applicant) v. United Steelworkers of America and Babcock & Wilcox Canada (Respondents) (*Dismissed*)

**3479-95-R:** United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (Applicant) v. 1147182 Ontario Limited, c.o.b. as Walker Finishing (Respondent) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 95 (Intervener) (*Withdrawn*)

**0553-96-U:** United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Banlake Associates Limited c.o.b. as Bancroft I.G.A. (Respondent) (*Denied*)

**1150-96-U:** United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. 630599 Ontario Limited c.o.b. as Domcan Acoustical Company, Steflou Wall System & Acoustical Company (Respondents) (*Denied*)

**1985-96-R; 1986-96-U:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Stone Electric (Canada) 3269353 Canada Inc. (Respondent); International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Stone Electric Inc., Rand-Mar Electric Company Ltd., Gary Dresher and Bob McMullin (Respondents) (*Denied*)

**2056-96-U:** John Kowopka (Applicant) v. C.U.P.E. Local 1144, St. Joseph's Health Centre (Respondents) (*Dismissed*)

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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING JANUARY 1997

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**2354-95-R:** International Brotherhood of Electrical Workers Construction Council of Ontario (Applicant) v. Mitech Machine and Fabrication Ltd. (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Mitech Machine and Fabrication Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of Mitech Machine and Fabrication Ltd. in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (15 employees in unit)

### Bargaining Agents Certified Subsequent to Vote

**1622-96-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Monopoli Electric Limited, and Skymart Electrical Contractor Ltd. (Respondents)

Unit: "all journeymen and apprentice electricians and journeymen and apprentice linemen, in the employ of Monopoli Electric Limited and Skymart Electrical Contractor Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice electricians and journeymen and apprentice linemen, in the employ of Monopoli Electric Limited and Skymart Electrical Contractor Ltd. in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (15 employees in unit)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	15
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

**1661-96-R:** Sheet Metal Workers' International Association, Local Union 285 (Applicant) v. Metropolitan Sheet Metal Limited (Respondent)

Unit: "all sheet metal workers and registered apprentice sheet metal workers in the employ of Metropolitan Sheet Metal Limited in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, and the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	14
Number of segregated ballots cast by persons whose names appear on voters' list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	8
Number of ballots marked in favour of applicant	3
Number of ballots segregated and not counted	11

**2007-96-R:** Canadian Union of Operating Engineers and General Workers (Applicant) v. Brookfield LePage Management Eastern Ltd. (Respondent)

Unit: "all employees of Brookfield LePage Management Eastern Ltd., employed at BCE Place in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical and security employees" (59 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters' list	59
Number of persons who cast ballots	54
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	54
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	14

**2340-96-R:** Service Employees International Union, Local 204, Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. St. Michael's Hospital (Respondent)

Unit: "all employees of St. Michael's Hospital in Metropolitan Toronto, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dieticians, student dieticians, technical and professional personnel, supervisors, persons above the rank of supervisor, office and clerical staff and those employees already covered by any existing Collective Agreement or bargaining rights held by any Trade Union." (411 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	411
Number of persons who cast ballots	285
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	278
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	6
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	158
Number of ballots marked against applicant	119
Number of ballots segregated and not counted	7

**2412-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Vilo Systems Ltd. (Respondent)

Unit: "all employees of Vilo Systems Inc. in the Town of Tecumseh, save and except supervisors and those above the rank of supervisor, office sales staff, engineering department and students employed during the summer vacation period" (78 employees in unit)

Number of names of persons on revised voters' list	47
Number of persons who cast ballots	46
Number of segregated ballots cast by persons whose names appear on voter's list	42
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of ballots marked in favour of applicant	30
Number of ballots marked against applicant	12
Number of ballots segregated and not counted	4

**2542-96-R:** Communications, Energy & Paperworkers Union of Canada (Applicant) v. Web Community Resource Networks (Respondent)

Unit: “all employees of Web Community Resource Networks in the Province of Ontario save and except Manager and those above the rank of Manager” (5 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots marked in favour of applicant	6

**2773-96-R:** The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 67 (Applicant) v. Elgin Street Mechanical & Plumbing Inc. and Catherwood Welding & Boiler Service Inc. (Respondents)

Unit: “all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Elgin Street Mechanical & Plumbing Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Elgin Street Mechanical & Plumbing Inc. in all sectors of the construction industry in the County of Brant and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Norfolk, and the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (3 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0

**2803-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Saturn Distributing Inc. (Respondent)

Unit: “all warehouse employees of Saturn Distributing Inc., in the Town of Markham in the Regional Municipality of York, save and except supervisors, persons above the rank of supervisor, office and clerical staff and students employed during the school vacation period” (95 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	96
Number of persons who cast ballots	87
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	85
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	3
Number of ballots marked in favour of applicant	77
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	1

**2825-96-R:** Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647 (Applicant) v. Small Fry Snack Foods Inc. (Respondent)

Unit: “all drivers, salesmen, and warehouse employees, employed by Small Fry Snack Foods Inc. working in or out of the employer's facilities in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office and clerical staff” (38 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	38
Number of persons who cast ballots	27
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	15



**2843-96-R: Canadian Union of Public Employees (Applicant) v. Gateway Residence of Niagara Inc. (Respondent)**

Unit: "all employees of Gateway Residence of Niagara Inc. in the Regional Municipality of Niagara, save and except the Administrative Director and the Program Director" (5 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	4
Number of ballots segregated and not counted	1

**2844-96-R: Canadian Union of Public Employees (Applicant) v. Niagara Placement Coordination Services (Respondent)**

Unit: "all employees of Niagara Placement Coordination Service in the Regional Municipality of Niagara, save and except Executive Director, persons above the rank of Executive Director and Administrative Assistant" (10 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of ballots marked in favour of applicant	10

**2864-96-R: Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Imperial Trim Supply & Installation (Respondent)**

Unit: "all carpenters and carpenters' apprentices in the employ of Imperial Trim Supply & Installation in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Imperial Trim Supply & Installation in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (5 employees in unit)

Number of persons who cast ballots	2
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	2
Number of ballots marked in favour of applicant	2

**2871-96-R: United Food and Commercial Workers International Union Local 175 (Applicant) v. MSAS Cargo International (Canada) Inc. (Respondent)**

Unit: "all employees of MSAS Cargo International (Canada) Inc. at 3250 Caravelle Drive, Mississauga, Ontario, save and except Assistant Supervisors and those above the rank of Assistant Supervisor, Office and Clerical and Sales Staff" (12 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of ballots marked in favour of applicant	8
Number of ballots marked against applicant	4

**2872-96-R:** Ontario Nurses' Association (Applicant) v. Victorian Order of Nurses Middlesex-Elgin Branch (Respondent)

Unit: "all employees of the Victorian Order of Nurses, Middlesex-Elgin Branch, at its Thames Valley Placement Coordination Services in the Counties of Middlesex, Elgin, and Oxford, save and except Directors and persons above the rank of Director" (18 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	16
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	16
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	5

**2914-96-R:** The Canadian Union of Operating Engineers and General Workers (Applicant) v. Wallaceburg Water Commission (Respondent)

Unit: "all employees of the Wallaceburg Water Commission employed in the Municipality of Wallaceburg save and except supervisor and persons above the rank of supervisor and persons covered by a subsisting collective agreement as of November 25, 1996, and persons employed for less than 24 hours per week" (3 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	2
Number of ballots segregated and not counted	1

**2959-96-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. 690328 Ontario Inc. o/a Tri Trim Contractors (Respondent)

Unit: "all journeymen and apprentice carpenters other than millwrights in the employ of 690328 Ontario Inc. o/a Tri Trim Contractors in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice carpenters other than millwrights in the employ of 690328 Ontario Inc. o/a Tri Trim Contractors in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	2

**2972-96-R:** Canadian Union of Public Employees (Applicant) v. Espanola Hydro-Electric Commission (Respondent)

Unit: "all employees of the Espanola Hydro-Electric Commission in the District of Sudbury, save and except the General Manager, persons above the rank of General Manager and the Office Supervisor" (4 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4

Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	4
Number of ballots segregated and not counted	1

**2973-96-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Canada Wide Parking Inc. (Respondent)

Unit: "all employees of Canada Wide Parking Inc., employed in the City of London, Ontario, save and except supervisors, persons above the rank of supervisor, sales, clerical and office staff" (20 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	4

**3001-96-R:** Communications, Energy & Paperworkers Union of Canada (CEP) (Applicant) v. Espanola District Credit Union Ltd. (Respondent)

Unit: "all employees of Espanola and District Credit Union Ltd. in the Towns of Espanola, Little Current and Gore Bay save and except the administrative supervisor, persons above the rank of administrative supervisor and the clerk/typist" (18 employees in unit)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	9

**3024-96-R:** Canadian Union of Public Employees (Applicant) v. Regional Municipality of Halton (Respondent) v. International Brotherhood of Electrical Workers Local 636 (Intervener)

Unit: "all employees of the Regional Municipality of Halton, in its Maintenance and Operations Divisions of the Department of Public Works, save and except Supervisors, persons above the rank of Supervisor, office, clerical and technical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (114 employees in unit) (*Having regard to the agreement of the parties*) (*Clarity Note*)

Number of names of persons on revised voters' list	114
Number of persons who cast ballots	83
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	83
Number of ballots marked in favour of applicant	54
Number of ballots marked in favour of intervener	29

**3025-96-R:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Superior Insulation Services Inc. (Respondent)

Unit: "all journeymen and apprentice insulators and asbestos workers in the employ of Superior Insulation Services Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice insulators and asbestos workers in the employ of superior Insulation Services Inc. in all other sectors of the construction industry in The County of Wellington, the Regional Municipality of Hamilton-Wentworth, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, and in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic



Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	5
Number of ballots marked in favour of applicant	5

**3053-96-R:** London and District Service Workers' Union, Local 220 SEIU, CLC, AFL, CIO (Applicant) v. Victorian Order of Nurses, Sarnia-Lambton Branch (Respondent) v. Ontario Nurses' Association (Intervener)

Unit: "all office and clerical employees employed by Victorian Order of Nurses, Sarnia-Lambton Branch at Sarnia-Lambton Home Care and Placement Co-ordination Services in the City of Sarnia, save and except Supervisors, persons above the rank of Supervisor (including the Director and Assistant Director), Placement Co-ordinators, the Special Project Clerk, and persons for whom any trade union held bargaining rights as of December 13, 1996" (16 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	1

**3064-96-R:** Communications, Energy & Paperworkers Union of Canada (CEP) (Applicant) v. Union Gas Limited (Respondent)

Unit: "all office and clerical employees of Union Gas Limited in the City of Sarnia, save and except Supervisors, persons above the rank of Supervisor, Sales Representatives, Technicians, the secretary to the Human Resources Manager/Operations Manager and the secretary to the Sales Manager" (25 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	26
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	23
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	3

**3069-96-R:** Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Cumberland (Respondent)

Unit: "all employees of the Corporation of the Township of Cumberland in the Township of Cumberland, save and except foremen and managers, persons above the rank of foreman and manager, superintendents, office and clerical staff" (45 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	45
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	37
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	12

**3111-96-R:** Local Union 636 of the International Brotherhood of Electrical Workers (Applicant) v. Bancroft Public Utilities Commission (Respondent)

Unit: "all employees of the Bancroft Public Utilities Commission in the Town of Bancroft, save and except General Manager, Assistant Treasurer and persons above the rank of Assistant Treasurer" (6 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	6

**3157-96-R:** The Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Pribanic Mechanical Services Limited (Respondent)

Unit: "all plumbers and plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Pribanic Mechanical Services Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all plumbers and plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Pribanic Mechanical Services Limited in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; and the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	1

**3160-96-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Best Western Roehampton Hotel (Respondent)

Unit: "all front desk, night audit and reservations clerks, employed at the Best Western Roehampton Hotel, 808 Mount Pleasant Road, Toronto, save and except supervisors, persons above the rank of supervisor, office and sales staff, and persons for whom any trade union held bargaining rights as of the application date, December 24, 1996" (8 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	1

**3161-96-R:** Canadian Union of Public Employees (Applicant) v. The Hastings-Prince Edward County Roman Catholic Separate School Board (Respondent)

Unit: "all employees of The Hastings-Prince Edward County Roman Catholic Separate School Board employed in maintenance and custodial positions, save and except co-ordinators, persons above the rank of co-ordinator, office and clerical staff and employees for whom any trade union held bargaining rights as of December 24th, 1996" (41 employees in unit) *(Having regard to the agreement of the parties)*

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	40
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	40
Number of ballots marked in favour of applicant	38
Number of ballots marked against applicant	2

**3176-96-R:** Labourers' International Union of North America Local 183 (Applicant) v. Apollo 8 Maintenance Services Limited (Respondent)

Unit: "all employees of Apollo 8 Maintenance Services Limited engaged in cleaning at Bell-Trinity Square, 483 Bay Street, in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office and clerical staff, and students employed during the school vacation period" (57 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	56
Number of ballots marked in favour of applicant	43
Number of ballots marked against applicant	3

**3178-96-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Century Distributing Inc. (Respondent)

Unit: "all employees of Century Distributing Inc. employed in its Century Building Services Division at London Hydro, 111 Horton Street, London, save and except supervisors, persons above the rank of supervisor, sales, clerical and office staff" (5 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	1

**3197-96-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Marriott Management Services (Respondent)

Unit: "all employees of Marriott Management Services engaged in cleaning at 137 Bond Street (O'Keefe House) and 160 Mutual Street (Pitman Hall) in the Municipality of Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor" (4 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	1

**3279-96-R:** U.F.C.W. Local 333 (Applicant) v. Greater Metro Security Services Inc. (Respondent)

Unit: "all employees of Greater Metro Security Services Inc. in the Province of Ontario, save and except patrol supervisors and persons above the rank of patrol supervisor" (9 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	2



Number of ballots marked against applicant

1

### Applications for Certification Dismissed Subsequent to Vote

**0326-96-R:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. J.G. Barrette Electric Ltd. (Respondent)

Unit: "all electricians, electricians' apprentices, linemen and linemen apprentices in the employ of J.G. Barrette Electric Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians, electricians' apprentices, linemen and linemen apprentices in the employ of J.G. Barrette Electric Ltd. in all other sectors in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	21
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	13

**2128-96-R:** International Union of Bricklayers and Allied Craftsmen, Local 20 (Applicant) v. 1067447 Ontario Limited (Respondent)

Unit #1: "all journeymen and apprentice bricklayers, stonemasons and plasterers and improvers in the employ of Cobourg Masonry in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice bricklayers, stonemasons and plasterers and improvers in the employ of Cobourg Masonry in all other sectors of the construction industry in the Town of Kirkland Lake and the geographic Townships adjacent thereto in the District of Temiskaming, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	1

Unit #2: "all journeymen and apprentice bricklayers, stonemasons and plasterers and improvers in the employ of 1067447 Ontario Limited (Cobourg Masonry) in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice bricklayers, stonemasons and plasterers and improvers in the employ of 1067447 Ontario Limited (Cobourg Masonry) in all other sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	1

**2358-96-R:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Elitrex Plumbing Ltd. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Elitrex Plumbing Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of Elitrex

Plumbing Ltd. in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non- working foremen and persons above the rank of non-working foreman" (15 employees in unit)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	7

**2411-96-R:** International Union of Bricklayers and Allied Craftsmen Local 28 (Applicant) v. Filiatreault Masonry Limited (Respondent)

Unit: "tous les compagnons et apprentis briqueteurs, tailleurs de pierre et rénovateurs employés par Filiatreault Masonry Limited dans le secteur industriel, commercial et institutionnel de l'industrie de la construction dans la province de l'Ontario ainsi que tous les compagnons et apprentis briqueteurs, tailleurs de pierre et rénovateurs employés par Filiatreault Masonry Limited dans tous les autres secteurs de l'industrie de la construction dans un rayon de 57 kilomètres (environ 35 milles) de l'édifice fédéral de la ville de Sudbury, à l'exception des contremaîtres qui ne font pas de travail manuel et des personnes au-dessus du rang de cette dernière catégorie and all journeymen and apprentices bricklayers, stonemason and improvers in the employ of Filiatreault Masonry Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentices bricklayers, stonemason and improvers in the employ of Filiatreault Masonry Limited in all other sectors of the construction industry in within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	1

**2437-96-R:** International Association of Machinists and Aerospace Workers (Applicant) v. B A Banknote, A Division of Quebecor Printing Inc. (Respondent)

Unit: "all security guards employed by B A Banknote, a division of Quebecor Printing Inc. in the City of Ottawa" (7 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	0

**2472-96-R:** International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. A. M. Drywall Ltd. (Respondent)

Unit: “all painters and painters’ apprentices in the employ of A. M. Drywall Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all painters and painters’ apprentices in the employ of A. M. Drywall Ltd. in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (4 employees in unit) (*Clarity Note*)

Number of names of persons on revised voters’ list	4
Number of persons who cast ballots	4
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	2

**2865-96-R:** Canadian Union of Public Employees (Applicant) v. Leisureworld Inc., Barrie Centre (Respondent) v. Christian Labour Association of Canada (Intervener)

Unit: “all employees of Leisureworld Inc., Barrie Centre, Ontario save and except Administrator, Office Manager, Director of Nursing, Office Administrator, Supervisors and persons above the rank of Supervisor and office staff” (57 employees in unit)

Number of names of persons on revised voters’ list	58
Number of persons who cast ballots	52
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	52
Number of ballots marked in favour of applicant	26
Number of ballots marked in favour of intervener	26

**2873-96-R:** International Brotherhood of Painters and Allied Trades, Local 200 (Applicant) v. La Copagnie D’Assurance Motors (Respondent)

Unit: “all claims clerks and administration staff employed by La Copagnie D’Assurance Motors in the Municipality of Ottawa-Carleton” (39 employees in unit)

Number of names of persons on revised voters’ list	39
Number of persons who cast ballots	37
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	30
Number of segregated ballots cast by persons whose names appear on voter’s list	7
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	21
Number of ballots segregated and not counted	7

**3052-96-R:** International Brotherhood of Electrical Workers Construction Council of Ontario (Applicant) v. 818791 Ontario Ltd. c.o.b. as Phase 1 Electric Ltd. (Respondent)

Unit: “all electricians and electricians’ apprentices in the employ of 818791 Ontario Ltd. c.o.b. as Phase 1 Electric Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all electricians and electricians’ apprentices in the employ of 818791 Ontario Ltd. c.o.b. as Phase 1 Electric Ltd. in all other sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman” (5 employees in unit)

Number of names of persons on revised voters’ list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	5
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	3



**3066-96-R:** United Transportation Union (Applicant) v. 944764 Ontario Ltd. c.o.b. as Your Choice Transportation (Respondent)

Unit: "all employees of Your Choice Shuttle in Orillia, Ontario employed as drivers and dispatchers, save and except supervisors, persons above the rank of supervisor, office and clerical staff" (54 employees in unit)

Number of names of persons on revised voters' list	73
Number of persons who cast ballots	54
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	53
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	29
Number of ballots segregated and not counted	1

**3146-96-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Corma Inc. (Respondent)

Unit: "all employees of Corma Inc. in the City of Vaughan, save and except foremen, persons above the rank of foreman, office, sales and clerical staff and engineering department" (119 employees in unit) (*Having regard to the agreement of the parties*)

Number of names of persons on revised voters' list	120
Number of persons who cast ballots	116
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	103
Number of segregated ballots cast by persons whose names appear on voter's list	13
Number of ballots marked in favour of applicant	35
Number of ballots marked against applicant	68
Number of ballots segregated and not counted	13

**3204-96-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Panson Electrical Services Ltd. (Respondent)

Unit: "all journeymen electricians and electricians' apprentices in the employ of Panson Electrical Services Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen electricians and electricians' apprentices in the employ of Panson Electrical Services Ltd. in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non- working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	2

**3220-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Tregaskiss Ltd. (Respondent)

Unit: "all employees of Tregaskiss Ltd. in the Township of Oldcastle, save and except supervisors, those above the rank of supervisor, office and sales staff" (69 employees in unit)

Number of names of persons on revised voters' list	70
Number of persons who cast ballots	69

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	65
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	23
Number of ballots marked against applicant	41
Number of ballots segregated and not counted	4

### Applications for Certification Withdrawn

**2333-94-R:** Labourers' International Union of North America, Local 837 (Applicant) v. Bermingham Construction, a division of Baltidaniel Inc. (Respondent) v. International Union of Operating Engineers, Local 793, United Brotherhood of Carpenters and Joiners of America, Local 18 (Interveners)

**2498-96-R:** International Brotherhood of Painters and Allied Trades, Local Union 1819 (Glaziers) (Applicant) v. Enex Door Automation Inc. (Respondent)

**3054-96-R:** Canadian Union of Public Employees (Applicant) v. Prescott & Russell Royal Comtois Centre (Respondent) v. Ontario Public Service Employees Union (Intervener)

**3134-96-R:** Independent Canadian Transit Union and its Local 6 (Applicant) v. Soeurs de la Charite D'Ottawa, Résidence St. Joseph (Respondent) v. Canadian Union of Public Employees and its Local 3101 (Intervener)

**3145-96-R:** Ontario Nurses' Association (Applicant) v. Kent County Placement Coordination Services, Victorian Order of Nurses' Chatham-Kent Branch (Respondent)

**3174-96-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Columbia Building Maintenance (Respondent)

**3175-96-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Hallmark Housekeeping Services Inc. (Respondent)

**3177-96-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Columbia Building Maintenance (Respondent)

**3356-96-R:** Canadian Union of Public Employees (Applicant) v. Stormont, Dundas and Glengarry Developmental Services (Respondent)

**3419-96-R:** Millwright District Council of Ontario and its Local 1592 (Applicant) v. Midwest Constructors Corp. (Respondent)

### APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**0698-95-R:** Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicants) v. Northview Plumbing Limited and Tarlton Mechanical Inc. (Respondents) (*Withdrawn*)

**3162-95-R:** The United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. 1147997 Ontario Inc. c.o.b. as Cambridge Grocery Depot and Valdi Foods (1987) Inc. (Respondents) (*Withdrawn*)

**0018-96-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Global Mechanical Ltd., Intercontinental Plumbing and Fire Protection Co. Ltd., Dynamic Power Excavating Ltd., IPJ Investments Ltd. (Respondents) (*Granted*)

**0021-96-R:** International Association of Bridge, Structural and Ornamental Ironworkers, Local 700 (Applicant) v. Up-Rite Door Ltd., Ernest Mitro c.o.b. as Up-Rite Installations (Respondents) (*Endorsed Settlement*)

**1627-96-R:** United Food and Commercial Workers International Local 175 (Applicant) v. Royal LePage and Impact Building Maintenance Services Limited (Respondents) (*Withdrawn*)

**1826-96-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. 343419 Ontario Ltd. c.o.b. as Derby Community Bingo, Windsor Bingo Palace Ltd. c.o.b. as Windsor Bingo Palace and J.I.V. Enterprises Inc. (Respondents) (*Endorsed Settlement*)

**1956-96-R:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. 879917 Ontario Ltd. c.o.b. as Ames Electric and 715720 Ontario Inc. c.o.b. as Tri Star Electric and R.M. Belanger Limited and Doug Winter Electric (Respondents) (*Granted*)

**2952-96-R:** The Ontario Public Service Employees Union, Local 525 (Applicant) v. Metro Tenants Legal Services, Ontario Legal Aid Plan Clinic Funding Office (Respondents) (*Withdrawn*)

## SALE OF A BUSINESS

**0698-95-R:** Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicants) v. Northview Plumbing Limited and Tarlton Mechanical Inc. (Respondents) (*Withdrawn*)

**3162-95-R:** The United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. 1147997 Ontario Inc. c.o.b. as Cambridge Grocery Depot and Valdi Foods (1987) Inc. (Respondents) (*Withdrawn*)

**0018-96-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Global Mechanical Ltd., Intercontinental Plumbing and Fire Protection Co. Ltd., Dynamic Power Excavating Ltd., IPJ Investments Ltd. (Respondents) (*Granted*)

**0021-96-R:** International Association of Bridge, Structural and Ornamental Ironworkers, Local 700 (Applicant) v. Up-Rite Door Ltd., Ernest Mitro c.o.b. as Up-Rite Installations (Respondents) (*Endorsed Settlement*)

**1956-96-R:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. 879917 Ontario Ltd. c.o.b. as Ames Electric and 715720 Ontario Inc. c.o.b. as Tri Star Electric and R.M. Belanger Limited and Doug Winter Electric (Respondents) (*Granted*)

**2952-96-R:** The Ontario Public Service Employees Union, Local 525 (Applicant) v. Metro Tenants Legal Services, Ontario Legal Aid Plan Clinic Funding Office (Respondents) (*Withdrawn*)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**3914-95-R:** The Cadillac Fairview Corporation Limited (Applicant) v. Canadian Union of Operating Engineers and General Workers (Respondent) (*Withdrawn*)

**2209-96-R:** Tim Wilson (Applicant) v. Retail Wholesale Canada Canadian Service Sector, Division of the United Steelworkers of America Local 1000 (Respondent) v. The Brick Warehouse Corporation (Intervener)

Unit: "all employees of The Brick Warehouse Corporation, in the City of St. Catharines, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period" (26 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	28



Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of respondent	13
Number of ballots marked against respondent	13
Number of ballots segregated and not counted	2
Number of names of persons on revised voters' list	28
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of ballots marked in favour of respondent	13
Number of ballots marked against respondent	12

**2221-96-R:** Alain Lamoureux, on his own behalf and on behalf of a group of employees of Famous Players Inc. (Applicant) v. International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada (Respondent) v. Famous Players Inc. (Intervener)

Unit: "all employees of the Employer at its Gloucester 5 Cinemas in the City of Ottawa save and except Relief Managers and Floor Supervisors and persons above the rank of Relief Manager and Floor Supervisor save and except those persons in the bargaining units for whom I.A.T.S.E. Local 173 holds bargaining rights" (25 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked against respondent	19
Number of ballots segregated and not counted	1

**2228-96-R:** Leah Antonucci, on her own behalf and on behalf of a group of employees of Famous Players Inc. (Applicant) v. International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada (Respondent) v. Famous Players Inc. (Intervener)

Unit: "all employees of the Employer at its Britannia Six Theatre in the City of Ottawa save and except Assistant Managers, and persons above the rank of Assistant Manager and those persons in the bargaining units for whom I.A.T.S.E. Local 173 holds bargaining rights" (30 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of ballots marked against respondent	26
Number of ballots segregated and not counted	2

**2731-96-R:** Tammy Finn (Applicant) v. Canadian Union of Public Employees and its Local 131-2 (Respondent) v. Empress Gardens Retirement Residence (Intervener)

Unit: "all employees of Empress Gardens Retirement Residence at Peterborough, Ontario save and except Supervisors, persons above the rank of Supervisors, Registered Nurses and the Secretary to the Administrator" (40 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32

Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	31

**2768-96-R:** Carol Boulton (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) v. 1190779 Ontario Ltd. James Street Food Town (Intervener) (*Dismissed*)

**2771-96-R:** The Employees of Waste Management York/Simcoe, a division of WMI Waste Management of Canada, Inc. (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent)

Unit: "all employees of Waste Management York/Simcoe, a division of WMI Waste Management of Canada, Inc. working in and around Metropolitan Toronto, the Region of York, County of Simcoe, County of Dufferin, Region of Peel and the Region of Durham, save and except non-working foreman, persons above the rank of non-working foreman, office staff, and students during school vacations" (42 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	47
Number of persons who cast ballots	43
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	43
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	42

**2826-96-R:** Silvester Lincmajer Jr. on behalf of all petitioning Employees of Pyke Manufacturing Ltd. (Applicant) v. United Steelworkers of America (Respondent) v. Pyke Manufacturing Ltd. (Intervener)

Unit: "all employees of Pyke Manufacturing Ltd. in the City of Oshawa, save and except forepersons, persons above the rank of foreperson, office, clerical and sales staff, professional engineers, (within the meaning of the Ontario Labour Relations Act) and students employed during the school vacation period" (19 employees in unit) (*Dismissed*)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of ballots marked in favour of respondent	11
Number of ballots marked against respondent	10

**2867-96-R:** Anik Henri, on her own behalf and on behalf of a group of employees of Adjajo Holdings Inc., c.o.b. as Norcon Canada (Applicant) v. United Steelworkers of America (Respondent) v. Adjajo Holdings Inc., c.o.b. as Norcon Canada (Intervener)

Unit: "all employees employed by Adjajo Holdings Inc. c.o.b. as Norcon Canada, in the Province of Ontario, save and except persons covered by a collective agreement or by a current certificate issued by the Ontario Labour Relations Board, supervisors and persons above the rank of supervisor" (18 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of ballots marked in favour of respondent	2
Number of ballots marked against respondent	10

**2868-96-R:** Zellers Employees Store 007 Belleville, Ontario as per signed petition, represented by Marjorie A. Holmes (Applicant) v. United Food and Commercial Workers Union Local 175 (Respondent) (*Terminated*)

**2987-96-R:** Nancy Milano (Applicant) v. Retail Wholesale Canada, Canadian Service Sector United Steelworkers of America Local 488 (Respondent) v. J.P. Murphy Inc. (Intervener)

Unit: "all employees of J.P. Murphy Inc. at 1545 Woodroffe Avenue, in the City of Nepean, Ontario, save and except Assistant Managers and persons above the rank of Assistant Manager" (45 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	48
Number of persons who cast ballots	33
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	32

**3083-96-R:** Employees of Allied Conveyors Ltd. (Applicant) v. Local 2784 of the United Steelworkers of America (Respondent) v. Allied Conveyors Ltd. (Intervener)

Unit: "all employees of Allied Conveyors Ltd. in Pickering, save and except foreman, persons above the rank of foremen, office and sales staff, and students employed during the school vacation period" (16 employees in unit) (*Granted*)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	14
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	11

**3167-96-R:** Sandra Wilson (Applicant) v. Office and Professional Employees International Union, and its Local 343 (Respondent)

Unit: "all employees of MacMillan, Stipic in its offices except members of the Law Society of Upper Canada" (3 employees in unit) (*Granted*)

**3194-96-R:** Darlene Belair (Applicant) v. Retail Wholesale Canada Canadian Service Sector, Division of the United Steelworkers of America Local 1688 the Ontario Taxi Union (Respondent) v. Call-A-Cab Limited (Intervener) (*Granted*)

**3267-96-R:** D. Balkwill, T. Battalia, C. Bennett, S. Bonnell, A. Bristow, L. Clark, C. Folz, T. Hamburg, L. Kincely, B. Knox, Mrs. C. McCallum, Ms. C. McCallum, B. McLaughlin, D. Millar, L. Moncur, K. Page, B. Payne, D. Payne, D. Quail, L. Sheppard, C. Smith, W. Stein, C. Stewart, B. Terrelly and F. Wallis (Applicant) v. United Steelworkers of America Local #4697 (Respondent) v. Birchmere Retirement Residence (Intervener) (*Granted*)

**3385-96-R:** The Employees of First Choice Haircutters Store #104 - Brantford (Applicant) v. The Service Employees International Union - Local 204 (Respondent) v. First Choice Haircutters Ltd. (Intervener) (*Granted*)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL LOCKOUT

**2694-96-U:** National Automobile, Aerospace and General Workers Union of Canada (CAW-Canada) and its Local 195 (Applicant) v. HSP-101 Inc., c.o.b. as Tecumseh Metal Products (Plant 5) (Respondent) v. Teamsters, Chauffeurs, Warehousemen & Helpers Local Union 880 ("Local 880") (Intervener) (*Withdrawn*)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**1232-93-U:** Canadian Union of Public Employees and its Local 3426 (Applicant) v. Geraldton District Association for Community Living (Respondent) (*Withdrawn*)

**0740-95-U:** Lisa Howarth (Applicant) v. London and District Service Workers' Union, Local 220 (Respondent) (*Withdrawn*)

**1861-95-U:** Peter Dyer (Applicant) v. Canadian Auto Workers, Local 222 (Respondent) v. General Motors of Canada Limited (Intervener) (*Dismissed*)



**3792-95-U:** International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Applicant) v. Famous Players Inc. (Respondent) (*Granted*)

**4065-95-U:** Carolyn Tetley Orgar (Applicant) v. Ontario Public Service Employees' Union (Respondent) v. Ministry of the Solicitor General and Correctional Services - Metro Toronto East Detention Centre (Intervener) (*Dismissed*)

**0143-96-U:** Roman Horodecky (Applicant) v. The Great Atlantic & Pacific Company of Canada, Limited and Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America (Respondents) (*Dismissed*)

**0974-96-U; 1331-96-U:** International Union of Operating Engineers, Local 772 and Daryl Roach (Applicant) v. Petro-Canada (Respondent) (*Withdrawn*)

**1163-96-U:** Richard Guilbeault (Applicant) v. United Food and Commercial Workers, Local 1000A (Respondent) v. Pierre & Mario's Your Independant Grocer (Intervener) (*Withdrawn*)

**1179-96-U:** Canadian Union of Public Employees, Local 1996 (Applicant) v. Toronto Public Library (Respondent) (*Withdrawn*)

**1196-96-U:** Raffick Aliry (Applicant) v. United Steelworkers of America (Local 9236), Walbar Canada Inc. (Respondents) (*Dismissed*)

**1395-96-U:** Liz Chase (Applicant) v. John Coones (Respondent) v. Liquor Control Board of Ontario (Intervener) (*Withdrawn*)

**1439-96-U:** Wayne Barnes (Applicant) v. Canadian Security Union and Wackenhut of Canada Ltd. (Respondent) (*Dismissed*)

**1451-96-U:** Ronald Scott Thomson (Applicant) v. Local 1991 of the Retail, Wholesale and Department Store Union District Council of the United Food and Commercial Workers International Union (Respondent) v. The Great Atlantic and Pacific Company of Canada, Limited (Intervener) (*Withdrawn*)

**1463-96-U:** Firoz Ramji (Applicant) v. Westbury Howard Johnson Plaza Hotel (Respondent) (*Dismissed*)

**1583-96-U; 1825-96-U:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. J.I.V. Enterprises Inc. c.o.b. as Derby Community Bingo and Windsor Bingo Palace (Respondents) Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. 343419 Ontario Ltd. c.o.b. as Derby Community Bingo, Windsor Bingo Palace Ltd. c.o.b. as Windsor Bingo Palace, J.I.V. Enterprises Inc. (Respondents) (*Endorsed Settlement*)

**1584-96-U:** United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Price Club London (Respondent) (*Withdrawn*)

**1632-96-U:** Raymond Poirier (Applicant) v. United Steelworkers of America (Respondent) (*Withdrawn*)

**1957-96-U:** International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. 879917 Ontario Ltd. c.o.b. as Ames Electric and 715720 Ontario Inc. c.o.b. as Tri Star Electric and Wayne Lytle, R.M. Belanger Limited and Ronald Belanger (Respondents) (*Granted*)

**2020-96-U:** Miss Kimmy Chan (Applicant) v. The Municipality of Metropolitan Toronto and Canadian Union of Public Employees, Local 79 (Respondents) (*Dismissed*)

**2094-96-U:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. E.B. Eddy Forest Products Ltd. Nairn Centre (Respondent) (*Withdrawn*)

**2102-96-U:** Group of Employees at Xerox - Canadian Manufacturing Operations - Toronto know as “Ghost List” People (Applicant) v. Union of Needletrades Industrial and Textile Employees Locals 1414H and 14J, and Canadian Manufacturing Operations - Toronto (Respondents) v. Xerox Canada Ltd. (Intervener) (*Dismissed*)

**2107-96-U:** Shirley E. H. Boyd (Applicant) v. OPSEU, Local 418 (Respondent) v. St. Lawrence College of Applied Arts & Technology (Intervener) (*Withdrawn*)

**2171-96-U:** Gary Demars (Applicant) v. Teamsters, Chauffeurs, Warehousemen and Helpers, Local 938 (Respondent) (*Withdrawn*)

**2216-96-U:** Fekria Ahmed (Applicant) v. International Union of Bricklayers and Allied Craftworkers Local #2 Toronto/Barrie (Respondent) v. Canadian Tire Petroleum (Intervener) (*Dismissed*)

**2246-96-U:** Laundry and Linen Drivers and Industrial Workers Union Local 847 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. The Hospital for Sick Children (Respondent) (*Withdrawn*)

**2251-96-U:** Wayne Barnes (Applicant) v. Wackenhut of Canada Ltd., Canadian Security Union (Respondents) (*Dismissed*)

**2265-96-U:** Avak Garabedian (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) (*Dismissed*)

**2424-96-U; 1810-96-U:** Service Employees International Union, Local 204, affiliated with the S.E.I.U., A.F. of L, C.I.O. (Applicant) v. St. Michael’s Hospital (Respondent) (*Withdrawn*)

**2489-96-U:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. B & B Electric Company Division of Electrobauer Systems Limited (Respondent) (*Withdrawn*)

**2506-96-U:** Canadian Union of Public Employees (Applicant) v. Corporation of the Township of Markham (Respondent) (*Withdrawn*)

**2527-96-U:** The International Union of Bricklayers and Allied Craftsmen, Local 28 (Applicant) v. Filiatreault Masonry Limited and Gaetan Filiatreault (Respondent) (*Withdrawn*)

**2563-96-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Loeb-Balmoral (Respondent) (*Withdrawn*)

**2639-96-U:** United Food and Commercial Workers International Union, Local 1000A (Applicant) v. Big V Pharmacies Co. Ltd. (Respondent) (*Withdrawn*)

**2695-96-U:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Elitrex Plumbing Ltd. (Respondent) (*Dismissed*)

**2734-96-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 195 (Applicant) v. HSP-101 Inc., c.o.b. as Tecumseh Metal Products (Plant 5) (Respondent) (*Withdrawn*)

**2818-96-U:** Brotherhood of Locomotive Engineers - (“BLE”) (Applicant) v. Goderich-Exeter Railway Co. Ltd. (Respondent) (*Withdrawn*)

**2933-96-U:** The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 67 (Applicant) v. Elgin Street Mechanical & Plumbing Inc. and Catherwood Welding & Boiler Service Inc. (Respondents) (*Withdrawn*)

**2950-96-U:** The Ontario Public Service Employees Union Local 525 (Applicant) v. Metro Tenants Legal Services (Respondent) (*Withdrawn*)

**2951-96-U:** The Ontario Public Service Employees Union Local 525 (Applicant) v. Ontario Legal Aid Plan Clinic Funding Office (Respondent) (*Withdrawn*)

**2967-96-U:** International Brotherhood of Painters and Allied Trades, Local Union 1819 (Glaziers) (Applicant) v. Enex Door Automation Inc. (Respondent) (*Withdrawn*)

**2988-96-U:** Gene Ross (Applicant) v. Goldcorp Inc. (Respondent) (*Dismissed*)

**3016-96-U:** Gary Leboeuf (Applicant) v. C.U.P.E. Local #66, The Corporation of the City of Mississauga (Respondents) (*Withdrawn*)

**3038-96-U:** Andrew Squires (Applicant) v. CAW - TCA Canada, Loomis Courier (Respondents) (*Withdrawn*)

**3039-96-U:** Communications, Energy and Paperworkers Union of Canada and its Local 492 (Applicant) v. Strathcona Paper Company, Division of Roman Corporation Limited (Respondent) (*Withdrawn*)

**3065-96-U:** Ontario Public Service Employees Union (Applicant) v. Government of Ontario, Ministry of Solicitor General & Correctional Services, Peterborough Jail (Respondents) (*Withdrawn*)

**3073-96-U:** Sylvia Bourgeois (Applicant) v. University Hospital, Workers Compensation Board, London and District Service Workers' Union, Local 220 (Respondents) (*Dismissed*)

**3131-96-U:** Service Employees Union, Local 183 (Applicant) v. Aye Company Limited and Grant Devolin (Respondent) (*Withdrawn*)

**3138-96-U:** The Ontario Public Service Employees Union (Applicant) v. The Trenton and District Association for Community Living (Respondent) (*Withdrawn*)

**3147-96-U:** Leila Anderson (Applicant) v. Hotel Employees Restaurant Employees Union, Local #75 (Respondent) (*Dismissed*)

**3151-96-U:** International Union of Operating Engineers, Local 793 (Applicant) v. Spurr Bros. Ltd. (Respondent) (*Withdrawn*)

**3156-96-U:** Laundry and Linen Drivers of Work Wear Corporation Ltd. (commonly known as G & K Work Wear) in Ontario (save and except Ottawa) (Applicant) v. Work Wear Corporation of Canada, Ltd. a subsidiary of G & K Services Inc. (G & K Work Wear) (Respondent) (*Dismissed*)

**3163-96-U:** Independent Union of Precision Diecasters (Applicant) v. Fisher Gauge Limited (Respondent) (*Withdrawn*)

**3201-96-U:** John Robert McLennan (Applicant) v. Ontario Provincial Police Association (Respondent) (*Dismissed*)

**3226-96-U:** Ms. Carol Kieffer (Applicant) v. Ontario Liquor Board Employees' Union (Respondent) v. Fort Erie Duty Free Shoppe Inc. (Intervener) (*Withdrawn*)

**3276-96-U:** Stephen Morvay (Applicant) v. Metropolitan Toronto Civic Employees' Union (Respondent) (*Dismissed*)

**3295-96-U:** Elwood Bedell (Applicant) v. International Operating Engineers Union and its Local 793 (Respondent) (*Withdrawn*)

**3308-96-U:** Mrs. Susan Bauer (Applicant) v. York University (Respondent) (*Dismissed*)

**3323-96-U:** Bill Piper (Applicant) v. B.A.S.F. Inks & Coatings Canada (Respondent) (*Dismissed*)



## APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

**3012-96-M:** Communications, Energy and Paperworkers Union of Canada and its Local 333-33 (Applicant) v. Fibre Resource Recovery Corporation (Respondent) (*Granted*)

**3033-96-M:** Master Welding and Industrial Supplies Division Canadian Liquid Air Ltd. (Applicant) v. The United Steelworkers of America Local 7282 (Sudbury and North Bay) and 8748 (Sault Ste Marie, Wawa and Manitouwadge) (Respondent) (*Granted*)

## FINANCIAL STATEMENT

**2223-96-M:** Wayne Barnes (Applicant) v. Canadian Security Union (Respondent) (*Dismissed*)

## JURISDICTIONAL DISPUTES

**1944-95-JD:** Ontario Public Service Employees Union (Applicant) v. Network North, The Community Mental Health Group and Ontario Nurses' Association (Respondents) (*Withdrawn*)

**0278-96-JD:** Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen, and International Union of Bricklayers and Allied Craftsmen, Local 7 (Applicant) v. The McBride Group Inc., Operative Plasterers and Cement Masons International Association of the U.S.A. and Canada, Local 598 and Labourers' International Union of North America, Local 527 (Respondents) v. United Brotherhood of Carpenters and Joiners of America, Local 93 (Intervener) (*Granted*)

**0876-96-JD:** Amalgamated Transit Union, Local 113 (Applicant) v. Toronto Transit Commission and Lodge 235, International Association of Machinists and Aerospace Workers (Respondents) (*Dismissed*)

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

**4661-94-M:** OPSEU (Local 559) (Applicant) v. Centennial College of Applied Arts and Technology (Respondent) (*Withdrawn*)

**2180-95-M:** Knox Presbyterian Church - Board of Managers (Applicant) v. Christian Labour Association of Canada (Respondent) (*Withdrawn*)

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**1231-93-OH:** Canadian Union of Public Employees and its Local 3426 (Applicant) v. Geraldton District Association for Community Living (Respondent) (*Withdrawn*)

**0334-96-OH:** Fred Bond (Applicant) v. E.B. Eddy Forest Products Ltd. Nairn Centre (Respondent) (*Withdrawn*)

**1755-96-OH:** Evelyn Brody (Applicant) v. East York Health Unit (Respondent) (*Dismissed*)

**1962-96-OH:** Nhu Chiao (Applicant) v. H & H Oriental Foods (Respondent) (*Withdrawn*)

**1964-96-OH:** Retail, Wholesale Canada Canadian Service Sector Division of the United Steelworkers of America Local 461 and Bill Harvey (Applicant) v. The Hostess Frito-Lay Company (Respondent) (*Withdrawn*)

**2093-96-OH:** Joel J. Lauzon (Applicant) v. Delphi Interior and Lighting Systems - A Division of General Motors of Canada Limited, and Mike Long (Respondent) (*Withdrawn*)

**2249-96-OH:** Edward R. Heald (Applicant) v. The Board of Education for the City of North York (Respondent) v. Ontario Public School Teachers Federation, North York District (Intervener) (*Dismissed*)

**2487-96-OH:** Nancy Fera (Applicant) v. C.E. Jamieson & Company Limited (Respondent) (*Withdrawn*)

**2533-96-OH:** Mary Lou McDougall (Applicant) v. North Halton Association for the Developmentally Handicapped (Respondent) (*Withdrawn*)

**2970-96-OH:** Timothy B. Luesby (Applicant) v. Crown in Right of Ontario as represented by the Ministry of Health, Angelo Milo (Respondent) (*Withdrawn*)

**3036-96-OH:** Darren Douglas Cockburn (Applicant) v. Tim Horton's (Respondent) (*Withdrawn*)

## CONSTRUCTION INDUSTRY GRIEVANCES

**2778-90-G:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Ellis-Don Limited (Respondent) (*Withdrawn*)

**0697-95-G:** Ontario Pipe Trades Council and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicants) v. Northview Plumbing Limited and Tarlton Mechanical Inc. (Respondents) (*Withdrawn*)

**1034-95-G; 2498-95-G:** The International Union of Bricklayers and Allied Craftsmen, Local 1 (Applicant) v. Tiger Masonry Contractors Ltd. (Respondent); The Bricklayers' & Masons' Union, No. 1, Ontario, of the International Union of Bricklayers & Allied Craftsmen (Applicant) v. Tiger Masonry Contractors Ltd. (Respondent) (*Withdrawn*)

**1614-95-G; 1955-96-G:** International Brotherhood of Electrical Workers, Local 1687 (Applicant) v. Ames Electric and , Doug Winter Electric (Respondents); International Brotherhood of Electrical Workers, Local Union 1687 (Applicant) v. 879917 Ontario Ltd. c.o.b. as Ames Electric and 715720 Ontario Inc. c.o.b. as Tri Star Electric and Doug Winter Electric and R.M. Belanger Limited (Respondents) (*Granted*)

**2331-95-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Canadian Highways International Constructors (Respondent) v. Metropolitan Toronto Road Builders Association (Intervener) (*Withdrawn*)

**4004-95-G:** International Association of Bridge, Structural and Ornamental Ironworkers, Local 700 (Applicant) v. Up-Rite Doors Ltd., Ernest Mitro c.o.b. as Up-Rite Installations (Respondents) (*Endorsed Settlement*)

**0019-96-G:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Global Mechanical Ltd., Intercontinental Plumbing and Fire Protection Co. Ltd., Dynamic Power Excavating Ltd., IPJ Investments Ltd. (Respondents) (*Granted*)

**0060-96-G; 0062-96-G; 0063-96-G; 0071-96-G; 0072-96-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Univex (Canada) Ltd. (Respondent); International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Vanier Electric Ltd. (Respondent); International Brotherhood of Electrical Workers, Local 586 (Applicant) v. T & M Electrical Limited (Respondent); International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Dale Murphy Electric Ltd. (Respondent); International Brotherhood of Electrical Workers, Local 586 (Applicant) v. C.& M. Electric Ltd. (Respondent) (*Withdrawn*)

**0064-96-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Megatech Electrical Ltd. (Respondent) (*Withdrawn*)

**0066-96-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. E.H. Scarabelli (1975) Inc. (Respondent) (*Withdrawn*)

**0413-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Eastgate Plumbing (Respondent) (*Endorsed Settlement*)

**0803-96-G:** United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Dufferin Construction Co. (Respondent) v. Labourers' International Union of North America, Local 837 (Intervener) (*Withdrawn*)

**1577-96-G:** Ontario Council of the International Brotherhood of Painters and Allied Trades (Applicant) v. Leem Decor (Respondent) (*Granted*)

**1907-96-G:** Sheet Metal Workers' International Association, Local 30 (Applicant) v. Trio Roofing Ltd. (Respondent) (*Withdrawn*)

**1977-96-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 736 (Applicant) v. The Electrical Power Systems Construction Association, Ontario Hydro (Respondents) (*Withdrawn*)

**2140-96-G; 3087-96-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Stephens and Rankin Inc. (Respondent) (*Withdrawn*)

**2191-96-G; 2193-96-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 736 (Applicant) v. Mainway Industrial Installations Inc. (Respondent) (*Withdrawn*)

**2224-96-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 736 (Applicant) v. Mainway Industrial Installations Inc. (Respondent) (*Withdrawn*)

**2440-96-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Emiliano Bairos, c.o.b. Milval Interiors (Respondent) (*Terminated*)

**2560-96-G:** International Brotherhood of Painters and Allied Trades District Council 46 (Applicant) v. Greenfield Painting Services (Division of Glover & Associates Painting Limited) (Respondent) (*Withdrawn*)

**2565-96-G:** Labourers' International Union of North America Local 183 (Applicant) v. Hi-Wall Forming Inc. (Respondent) (*Granted*)

**2620-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Mariofino Contracting Inc. (Respondent) (*Endorsed Settlement*)

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**March/April 1997**



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A Bimonthly Series of Decisions from the  
Ontario Labour Relations Board

Cited [1997] OLRB REP. MARCH/APRIL

EDITOR: RON LEBI

Selected decisions of particular reference value are  
also reported in *Canadian Labour Relations Boards  
Reports*, Butterworth & Co., Toronto.



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B & B ELECTRIC COMPANY DIVISION OF ELECTROBAUER SYSTEMS LIMITED,  
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**2736-96-R; 2743-96-R** Millwright District Council of Ontario and its Local 1410, Applicant v. **Alcan Aluminium Limited**, Responding Party v. Alcan Chemicals, Division of Alcan Aluminium Limited (“Chemicals”); Alcan Rolled Products (“Rolled Products”); Alcan Cable (“Cable”); Alcan Foil Products (“Foil”); United Steelworkers of America, Local 7949 and Local 8754; International Association of Machinists and Aerospace Workers, Lodge 54, Intervenor; Ontario Pipe Trades Council, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 221, Applicant v. Alcan Aluminium Limited, Responding Party v. Alcan Chemicals, Division of Alcan Aluminium Limited (“Chemicals”); Alcan Rolled Products (“Rolled Products”); Alcan Cable (“Cable”); Alcan Foil Products (“Foil”); United Steelworkers of America, Local 7949 and Local 8754; International Association of Machinists and Aerospace Workers, Lodge 54, Intervenor

**Certification - Construction Industry - Employer - Millwrights’ union and Plumbers’ union applying to represent bargaining units of millwrights and plumbers in ICI sector - Board rejecting argument that “division” of corporate legal entity, rather than corporate legal entity itself, acting as “employer” for labour relations purposes**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair.

**APPEARANCES:** *A.M. Minsky, Peter Shklanka, Brian Christie and John Telford* for Ontario Pipe Trades Council, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 221; *Harold F. Caley, Denis Ellickson and Wayne Vankoughnett* for Millwright District Council of Ontario and its Local 1410; *Paul A. Boniferro, Roy Meikle, John McCormack and Tom Sutton* for Chemicals; *Marie Kelly and Mohamed Baksh* for United Steelworkers of America, Local 7949 and Local 8754; *F.G. Hamilton, David Kennedy and Bob Wright* for Cable, Rolled Products and Foil; *Phil Hunt and Tim Hyatt* for the International Association of Machinists and Aerospace Workers, Lodge 54.

**DECISION OF THE BOARD;** March 10, 1997

## **I The Applications and the Issue**

1. These are two applications for certification made under the construction industry provisions of the Labour Relations Act, 1995.
2. Board File No. 2736-96-R is an application by the “Millwrights” for what is in effect a standard industrial, commercial and institutional (“ICI”) bargaining unit of journeymen and apprentice millwrights. I use the generic term “Millwrights” because it appears that there are in fact two trade union applicants. The Millwright District Council of Ontario is part of the employee bargaining agency designated to represent journeymen and apprentice millwrights who are represented by the affiliated bargaining agents identified in the designation issued by the Minister on January 30, 1978 for the ICI sector of the construction industry. The Council is also itself an affiliated bargaining agent. Local 1410 is both a constituent trade union of the Council and an affiliated bargaining agent. Accordingly, the Council and Local 1410 are separate trade union entities, each of which is entitled to bring an application for certification in the construction industry.
3. Although more than one trade union can make an application for certification with respect to the same bargaining unit of employees, it is not appropriate for more than one trade union to bring a

single application. Each trade union must bring its own. Otherwise, it is not clear how bargaining rights (outside of the ICI sector at least) would be apportioned in a certificate in the event that a single application by multiple applicants is successful (see *Centro Mechanical Inc.*, [1996] OLRB Rep. Sept./Oct. 762). This question may be spoken to in due course.

4. Board File No. 2743-96-R is an application by the "U.A." for the standard ICI bargaining unit of journeymen and apprentice plumbers and steamfitters. Again, I use the generic "U.A." because this application has also been brought by two separate U.A. trade union entities. The Ontario Pipe Trades Council (the "OPC") is both part of the designated employee bargaining agency designated to represent journeymen and apprentice plumbers and steamfitters represented by the affiliated bargaining agents described in the designation issued by the Minister in that respect, and is also one of the affiliated bargaining agents of that designated employee bargaining agency. Local 221 is both a constituent trade union of the OPC and an affiliated bargaining agent of the designated employee bargaining agency. Accordingly, this application is also brought by multiple applicants, which appears to be a problem. This may be spoken to in due course as well.

5. In both applications, representation votes have been ordered and held. In each case, more than fifty per cent of the ballots cast were marked in favour of the "applicant". Ordinarily, subject to resolving the issue of who the applicant in each case actually is, certificates would issue in each case.

6. However, there is a dispute between the parties regarding how the responding employer in each case should be identified, and potentially also a collateral issue regarding a bargaining unit description (which is not precisely the same as an issue, which is not the subject of this decision, raised in the interventions by the International Association of Machinists and Aerospace Workers, Lodge 54 (the "Machinists") and the United Steelworkers of America, Local 7949 and Local 8754 (the "Steelworkers").

7. In each application as filed, the responding employer has been identified as "Alcan Aluminum Limited". There is no dispute that the correct spelling of the company's name is "Alcan Aluminium Limited". That is not the issue.

8. Although it was given the usual notices of these applications, Alcan Aluminium Limited has not filed a response or any other materials in either of these applications. Nor did it appear at the hearing. However, Alcan Chemicals, Division of Alcan Aluminium Limited ("Chemicals") has filed a response in which it alleges that that is the proper name of the responding employer in these applications. In addition, Alcan Rolled Products ("Rolled Products"), Alcan Cable ("Cable") and Alcan Foil Products ("Foil") have filed separate interventions essentially supporting Chemicals' position. That is, Rolled Products, Cable and Foil all assert that they and Chemicals are individual employers for labour relations purposes, separate from each other and from Alcan Aluminium Limited, that Chemicals and not Alcan Aluminium Limited is the proper responding party in both applications, and that they would be, but should not be, affected if Alcan Aluminium is named as the employer in the certificates which will issue in these matters.

9. The proposition put forward by Chemicals, Rolled Products, Cable and Foil is a simple one. They assert that they are each independent autonomous business units which are separately operated and controlled by their own management, that the divisions of Alcan Aluminium Limited have been recognized as separate employers for labour relations purposes, and that the same recognition should be extended to Chemicals in these applications.

## **II Argument**

10. In that respect, Chemicals submits that the question before the Board in this case is: "who is the appropriate employer for labour relations purposes?" Counsel submits that this raises an issue



concerning what he described as the collision between the construction and “industrial” (or general) provisions of the Act. Counsel argues that the evidence establishes that Chemicals is a distinct business which is separate and independent from all other divisions of Alcan Aluminium Limited, and that it is therefore the appropriate or proper employer for labour relations purposes, and, more specifically, for purposes of these applications for certification, because it is the actual employer of the employees who are the subject of the application.

11. Counsel for Rolled Products, Cable and Foil focuses on what he described as the conflict between the industrial and construction regimes in the Act. He submits that these applications are one manifestation of that conflict, which also includes jurisdictional disputes between construction and non-construction unions, and litigation about what is and is not construction work. Counsel points out that under the industrial provisions of the Act unions tend to be certified on the basis of an application of the principles described in *Usarco Ltd.*, [1967] OLRB Rep. Sept. 526 for a bargaining unit of employees in the single municipality, and that when certified, an employer bargains “its own deal” with the trade union. Counsel submits that the construction industry provisions are designed to meet needs which are peculiar to that industry, and that the system of sectors, provincial bargaining in the ICI sector and area certification for other sectors, and the scheme of collective bargaining between employers and union organizations in the construction industry is not well suited to employers like the Alcan business units which operate primarily outside the construction industry. Counsel submits that on the evidence, the various divisions of Alcan Aluminium Limited before the Board in this case have a right to decide whether they will perform construction work and how they will do it. He argues that his clients should be able to continue to do so without any of the restrictions which would result from the certificates arising out of the decision by a separate division (i.e. Chemicals) to engage in the construction industry. Further, counsel argues that there is no demonstrable need to have the applicant’s bargaining rights attach to any division other than Chemicals, while to include Cable, Rolled Products and Foil will create conflicts with the industrial unions which already hold bargaining rights at plants operated by these other three divisions. Counsel submits that the Board certifies identifiable business or labour relations units, and that in balancing the rights and interests in these applications and having regard to the substance rather than the form of the business organizations before the Board, it would not be appropriate to include any division other than Chemicals as the employer entity.

12. The applicants submit that the “employer” in these applications must be described in terms of the legal entity which is involved, and that it is not appropriate to restrict the identification of the employer to a division of the employer which has no independent legal status. Similarly, argue the applicants, the Board should not effect such a result indirectly by limiting the bargaining rights to Chemicals in the bargaining unit description, as the Alcan divisions proposed in the alternative. It is implicit in the applicant’s submissions that they agree that there is a difference between construction and non-construction employers which results in different interests in labour relations concerns which the parties, both employer and trade union, have in each. As Mr. Minsky pointed out, for example, trade unions which represent construction employees separately and apart from non-construction employees are generally not as interested in an employer’s product as non-construction trade unions which represent the employees who produce those products. The applicants submit that the fact that being certified under the construction industry provisions of the Act may affect the way that Alcan Aluminium Limited operates in the construction industry is irrelevant. Further, the applicants submit that the divisions of Alcan which are before the Board are not as separate or independent as they profess to be, and that the real ultimate control in that respect lies with Alcan Aluminium Limited. Finally, the applicants argue that an application for certification does not raise an issue of conflict between construction and non-construction industry provisions of the Act, but that even if it does, the Act provides that in the event of a conflict, the construction industry provisions prevail.

13. The Machinists and Steelworkers chose not to participate in this phase of the proceeding.

### III The Board's Jurisprudence

14. In the course of argument, counsel referred to various Board decisions in support of their respective submissions. I find it unnecessary to review this jurisprudence in detail. Suffice to say that it is apparent from the jurisprudence that the Board's general preference and practice is to require that a legal entity, often a corporation, be identified as the employer party in an application for certification, and to effect any appropriate delineations of bargaining rights in the bargaining unit description. The following passage in *Beatrice Foods (Ontario) Limited*, [1982] OLRB Rep. June 815 is representative of this approach and the reasons for it:

3. Having considered the respondent's request, the Board is of the view that it would not be appropriate to amend the style of cause in the manner requested by the respondent. While a corporation may be subdivided into a number of divisions for operations, marketing and other purposes, the creation of such internal divisions does not change the fact that the legal entity which is the employer remains the corporation itself, which must have "Limited", "Incorporated", "Corporation", "Ltd.", "Inc." or "Corp." as the last word in its name (see *Business Corporations Act*, R.S.O. 1980, c. 54, s. 8, and *Canada Corporations Act*, R.S.C. 1970, c. C-32, s. 25). To forestall various difficulties that might otherwise arise with respect to such matters as enforcement of Board decisions and orders, it is preferable (although it has not, to date, been the Board's unvarying practice) to include only the corporate name of an (incorporated) employer in the style of cause of an application or complaint. If, as in the present case, it is appropriate to restrict the applicant's bargaining rights to employees who work in a particular division that has been established by their corporate employer, this can be accomplished by referring to that division in the description of the bargaining unit, as was done in the aforementioned decision dated May 31, 1982 in which the unit was described as "all employees of the respondent in its Model Dairy Division at Sault Ste. Marie ... (emphasis added)."

15. While this issue seems to arise more often in non-construction than in construction cases, the Board takes the same general approach in applications for certification in the construction industry. However, this general practice is just that and has not been followed in every case. The cases demonstrate that the Board has not required that the name of every employer party to an application for certification identify a legal entity.

16. In subsection 1(4) ("related employer") and section 69 ("successor employer" or "sale of business") proceedings, which are also in the nature of representation proceedings, the Board has concluded that the application of these preservation of bargaining rights provisions is not necessarily limited to entities which are separate legal entities (*Metroland Printing, Publishing & Distributing*, [1991] OLRB Rep. Sept. 1069), essentially on the theory that the bargaining rights attached to a definable commercial activity rather than to a particular legal vehicle (*Ethyl Canada Inc.*, [1982] OLRB Rep. July 998). Although I am unaware of any certification decision which specifically says so, it is readily apparent that the same approach is appropriately and has in fact been applied in certification proceedings. The Board has concluded that whether or not something which is not otherwise a legal entity is nevertheless appropriately treated as a separate employer and therefore an employer "entity" for purposes of the Labour Relations Act, is a question of fact, in which the focus of the inquiry is whether it has a separate labour relations identity (see, for example, *Radio Shack*, [1979] OLRB Rep. July 689, a non-construction case; and *George Hamers Limited*, [1981] OLRB Rep. Oct. 1382, a construction case).

17. This is why the Board can accept the agreement of the parties that the employer's name identifies something which is not necessarily a legal entity. Although the Board has not always accepted such an agreement of the parties (see, for example, *Thomson Newspapers Company Limited*, (unreported, Board File No. 2139-91-R, October 18, 1991), the Board has often done so. Examples of applications by U.A. entities where the Board has (apparently) accepted as an "employer" something which appears on its face not to be a legal entity include the following:

Board File No. 4210-95-R - "TTI Industrial, Division of 1154592 Ontario Inc.".

Board File No. 3208-92-R - "KMT Technical Services, a division of 839197 Ontario Limited".

Board File No. 2210-87-R - "Bieler Plumbing & Heating Ltd., Apollo Mechanical Contractors Division".

Board File No. 0962-86-R - "Ford Mechanical (Division of Ford Plumbing and Heating Company Limited)".

Board File No. 2735-83-R - "Mark V Enterprises Eastern Division".

Board File No. 4118-73-R - "Warnock Hersey International Limited - Professional Services Division".

Board File No. 3537-72-R - "Beaver Engineering Limited Wholesale Division".

Board File No. 3045-72-R - "Comfort-Guard Service Division of St. Catharines Fuels Division of the Canadian Fuel Marketers Group Limited".

18. Consequently, it is possible for the Board to name as the employer for purposes of an application for certification (i.e. for labour relations purposes) something which is not otherwise have a legal identity. (I note that for most purposes outside of the Labour Relations Act, 1995 or other labour relations legislation, trade unions do not have a legal identity either.) In that respect, the enforcement concern mentioned in Beatrice Foods, supra, and adverted to in argument by Mr. Ellickson can be answered by observing that ultimately a legal entity will always have responsibility for the liabilities or obligations of its non-legal entity components which are found by the Board to constitute a separate employer for purposes of the Act. There is no suggestion that the experience has been otherwise. (And again I note that trade unions, which have no legal identity outside of labour relations legislation unless they have incorporated, have nevertheless been able to enforce decisions of this Board and of Board's of Arbitration in the Courts.)

19. Accordingly, in these applications it is appropriate to consider whether the proper responding employer is Alcan Aluminium Limited or Chemicals.

#### **IV The Facts and Decision**

20. In order to focus attention on what is in dispute, I begin by reviewing what is not in dispute. It is not suggested that Alcan Aluminium Limited or Chemicals are not "employers" within the meaning of section 126 of the Act, or that the applicants are not trade unions within the meaning of section 126. That is, it is conceded that for purposes of the Act, Alcan Aluminium Limited and Chemicals are employers in the construction industry and that these applications are properly brought under the construction industry provisions of the Act. Since the applicants are affiliated bargaining agents of designated employee bargaining agencies and have chosen to bring their applications in relations to the ICI sector, it cannot be disputed that these applications have been brought under section 158(1) of the Act (as indeed the Board has already determined in its earlier decisions in which the votes taken in the applications were directed). It is common ground that the work being performed by the bargaining unit employees at the time the applications were filed was ICI sector work, and that all of the bargaining unit employees were employed at the Brockville job site. Accordingly, there can be no dispute concerning the geographic scope of the bargaining unit. That is, the bargaining unit must be described



in province-wide terms for the ICI sector and Board Area #30 is the appropriate geographic area for all other sectors of the construction industry.

21. Accordingly, the issue in dispute is whether Alcan Aluminium Limited and Chemicals are separate employers for purposes of the Act, and if so, whether Chemicals or Alcan Aluminium Limited is the employer of the bargaining unit employees in these applications. The question is not “what is the proper name of the employer?”. The real question is the one posed by counsel for Chemicals; namely, “who is the employer?”

22. Since the Alcan entities which have joined in these applications all assert that Chemicals is the proper responding employer, and not Alcan Aluminium Limited, the choice in that respect is between Chemicals and Alcan Aluminium Limited, which can fairly be described as Chemicals’ parent. And since it is a question of fact whether Chemicals is a separate employer for labour relations purposes and whether it is the employer of the employees who are the subject of these applications, it is the evidence which describes Alcan Aluminium Limited and Chemicals, and the relationship between them, which is the most important. It does not necessarily follow that if one or even all of Rolled Products, Cable or Foil are properly considered as being separate employers (and on the evidence it is not at all clear that Rolled Products and Foil are separate from each other at least), that Chemicals also is (or vice-versa). Accordingly, the evidence concerning Rolled Products, Cable and Foil is helpful only insofar as it helps describe the overall Alcan picture against which the facts specifically applicable to these applications can be assessed.

23. The Board heard from three witnesses. Chemicals called two of them. John McCormack testified that he is the president of “Alcan Chemicals, a Division of Alcan Aluminium Corporation” and general manager of “Alcan Chemicals North America”. Mr. McCormack is “president” of Alcan Chemicals in the United States, not of Alcan Aluminium Corporation. This position is equivalent to his position as general manager of Alcan Chemicals in Canada. Derek Prichett is the production manager for Chemicals at its Brockville Plant. Rolled Products, Cable and Foil called David Kennedy as a witness. Mr. Kennedy is a senior counsel of Alcan Aluminium Limited. As such, he is responsible for providing legal services to the Alcan group of business units. All three of these witnesses testified in a thoughtful and straightforward manner, although as counsel for the applicants pointed out, they did so with what appeared to be a keen awareness of the issue in dispute.

24. The dispute between the parties does not concern the facts, but rather what conclusions the Board should arrive at on the basis of facts which are relatively straightforward, at least as far as the evidence goes.

25. Alcan Aluminium Limited is a large multi-national corporation. In 1996 its world-wide sales total approximately 8.2 billion dollars. It operates business “units” in some thirty countries. In the manner which has become typical of large multi-national corporations, a large number of incorporated and unincorporated entities shelter under the Alcan Umbrella. The evidence before the Board includes what was referred to as a “10k” report filed with Securities and Exchange Commission in the United States. This document lists some 160 “subsidiaries of Alcan [Aluminium Limited], as of March 1, 1996” which meet what Mr. Kennedy called the “materiality test” for inclusion on the list. It appears that all but perhaps two of the approximately 160 entities listed on this document are incorporated (one is specifically identified as being unincorporated and one is noted as being “a company with unlimited liability”). It appears that the Alcan “family” has other incorporated and unincorporated entities within it as well, including the four unincorporated business units which have come forward in these applications and none of which are listed in the document filed with the United States Securities and Exchange Commission.

26. On the evidence, it is clear that Alcan Aluminium Limited owns and completely controls most of its corporate subsidiaries, and all of the unincorporated subsidiary entities, the latter including Chemicals. Alcan has structured its internal organization into separate business units for three major reasons:

- (1) in order to better monitor the profitability of its activities;
- (2) because of competition or anti-trust law concerns; and
- (3) because of the complexities of operating across international boundaries.

Consideration was given to creating a separate corporate structure for Chemicals, but that option was discarded because of tax and other legal considerations.

27. The Alcan business units before the Board consist of both unincorporated and incorporated structures. They exist as discrete slices of activity which operate through different corporations or parts of corporations, or individuals associated with them.

28. The attempt to create a separation between the business units, and between them and Alcan Aluminium Limited, has been made in response to the economic and legal exigencies which are faced by a multi-national corporation which has business interests throughout the world. The separation between them was not attempted for labour relations reasons, although it may have an effect on employment and labour relations matters. The question is just that, that is, whether there has been a separation created which in this Province has the effect of creating separate employers for labour relations purposes.

29. Turning to the specific question before the Board, Chemicals produces various activated aluminum products. This activity is quite different from the mining, smelting or metal fabrication activities carried out by other business units. Although there is some affinity between Chemicals and the mining activities, there is little in common between it and the smelting and fabricating activities. Chemicals operates two plants in Ontario. There is a small plant which has five employees in Ottawa. The second is the Brockville plant, which has some 40 "permanent" employees and is significantly larger. The Brockville plant was the pilot plant for Chemicals. Since it began operating, it has expanded several times. The employees who have expressed their desire to be represented by the applicants in these applications were engaged in the construction of the most recent expansion of the Brockville plant.

30. Dr. Roy Meikle is referred to as the "business manager" of "Activated Aluminas, Brockville". In effect, he is the plant manager of Chemicals Brockville plant. Dr. Meikle reports to Mr. McCormack who is located in Cleveland, Ohio and who wears several Alcan hats. What it comes down to, however, is that Mr. McCormack is in effect the general manager of Chemicals in North America. Mr. McCormack reports through Thomas Dingwall, the managing director of Alcan Chemicals Limited (Division of British Alcan Aluminium PLC) and director of British Alcan Aluminium PLC in England, to Emery LeBlanc, executive vice-president for Raw Materials and Chemicals for Alcan Aluminium Limited, in Montreal. Mr. LeBlanc in turn reports to Jacques Bougie, the president and chief executive officer of Alcan Aluminium Limited, also in Montreal, who is in turn responsible to the Board of Directors of Alcan Aluminium.

31. The way that this structure operates in practice does not demonstrate the kind of labour relations independence or separateness of Chemicals from Alcan Aluminium Limited which is asserted by the Alcan business units before the Board in these applications, or which would cause the Board to consider Chemicals to be a separate employer for purposes of the Act.

32. Although a separation can be discerned between Chemicals and the other business units before the Board, there is no obvious separation between Chemicals and Alcan Aluminium Limited. It is true that the day-to-day affairs and operations of Chemicals are managed locally, beginning at the plant level. But this is neither surprising nor unusual. Most large corporations operate this way, and the larger they get the more levels of “local” management there usually are. But equally often, as is the case here, there is very real control exerted at higher corporate levels, particularly, and most significantly in this case, in matters related to capital expenditures and labour relations.

33. Chemicals’ asserts that the labour relations and human resources functions in that division are localized at the plant level. But even Chemicals did not suggest that its Ottawa plant should not be encompassed by these applications. Nor does the evidence support the assertions of Chemicals and the other business units in that respect.

34. The evidence indicates that Chemicals is considered to be a division of both Alcan Aluminium Corporation, an American limited company in the United States which is wholly owned by Alcan Aluminium Limited, and of Alcan Aluminium Limited itself, that is, the “parent” company which filed the “10k” report referred to above, and which describes itself (in its 1995 annual report) as “... the parent company of an international group involved in all aspects of the aluminum industry. Through subsidiaries and related companies around the world, the activities of the Alcan Group include bauxite mining, alumina refining, power generation, aluminum smelting, manufacturing and recycling. Approximately 39,000 people are directly employed by the Company, with thousands more employed in related companies ...” That is, Alcan Aluminium Limited draws no distinction between employees depending on which division they work in. Further, Chemicals represents one aspect or activity of Alcan Aluminium Limited. Chemicals is not listed in either of the “10k report” or in the list of “principal subsidiaries, related companies or divisions” found on the inside back cover of Alcan Aluminium Limited 1995 annual report. Although Chemicals may be subject to review as a separate profit centre within Alcan Aluminium Limited, it is not reported as such in its annual report.

35. Nor is Chemicals promoted as an entity separate from or independent of Alcan Aluminium Limited. Not only does it trade on the word Alcan and the Alcan symbol, both of which are registered trade marks which Alcan Aluminium Limited correctly points out in its 1995 annual report “are synonymous with aluminum the world over”, Alcan Aluminium Limited is prominently featured in Chemicals promotional materials (Exhibit #3).

36. Nor does the structure of Chemicals indicate any obvious separation from Alcan Aluminium Limited. Indeed, it is apparent that Chemicals’ autonomy, both at the plant level and generally, is limited to day-to-day production matters and minor capital expenditures. The only evidence regarding limits on capital expenditures comes from Mr. Kennedy. He said that plant level limits are low. Since he testified that the next level up from the plant level has a limit of \$200,000.00, it is reasonable to infer that the limit for plant manager like Dr. Meikle is very low indeed. In the case of Chemicals, it is Mr. Dingwall who exercises the \$200,000.00 limit authority, even though one would expect that it would be the responsibility of Mr. McCormack who appears to be at the same corporate level as Mr. Bland, who exercises that authority as “president” of Cable. Mr. LeBlanc, the Alcan Aluminium Limited executive vice-president responsible for Chemicals, is at the same corporate level as Brian Sturgell who is executive vice-president responsible for “Fabricated Products North America” and therefore for Rolled Products, Cable and Foil. (Mr. Sturgell is also president of Alcan Aluminum Corporation in the United States). Presumably, Mr. LeBlanc has the same capital expenditure limit of two million dollars as Mr. Sturgell. There is nothing to suggest that he has some other limit. Although there is no evidence of what it is, Mr. Bougie has an even higher limit, and the final and presumably (theoretically) unlimited authority lies with Alcan Aluminium Limited board of directors. This structure reflects the central control which Alcan Aluminium Limited exercises in financial matters.



37. Although labour relations are said to be localized at the plant level, this is also subject to an “up the ladder” type of control. In that respect, Alcan Aluminium Limited’s 1995 annual report identifies a Personnel Committee which “has the responsibility for reviewing all personnel policy and employee relations matters ...”. Further, in collective bargaining matters, the plant manager and local human resources personnel prepare a “mandate” for collective bargaining which is subject to a “two up” approval. Since no trade union currently holds bargaining rights for employees there, there is no direct evidence of how this would work in the case of either Chemicals generally or the Brockville plant specifically, but it is reasonable to infer that it would work in much the same way as it does with Cable’s Bracebridge plant. There, a proposal is prepared at the plant level. It then goes to Mr. Bland for a general manager type of approval, and then to Mr. Sturgell for approval at the executive vice-president (of Alcan Aluminium Limited) level. Accordingly, collective bargaining is subject to approval and control exercised at the Alcan Aluminium Limited executive vice-president level. That is, by Alcan Aluminium Limited.

38. Further, although labour relations and human resources are said to be localized, it is apparent that the localization referred to is at the plant level. Whether or not the case is the same for the other three Alcan business units before the Board, the evidence does not suggest that Chemicals as a division has its own labour relations or human resources department separate from Alcan Aluminium Limited or the influences of Alcan Aluminium Limited.

39. Occupational Health and Safety is also a local responsibility, as it must be, but it is subject to what Mr. McCormack described as “central directives” which were not more specifically located.

40. When it comes to construction matters, there is even less separation between Chemicals and Alcan Aluminium Limited. In this case, there is little direct evidence before the Board regarding the construction project at the Chemicals’ plant in Brockville which is the subject of these applications. However, there is some documentary evidence which reveals some information, and there is evidence of the general practice which is followed when construction projects are undertaken by an Alcan entity, and which it is reasonable to infer was followed in this instance.

41. Exhibit #5 is a Notice of Project under the Occupational Health and Safety Act, which was filed with the Ministry of Labour with respect to the project. It reveals that the project was the extension of the Brockville production facility and warehouse involving buildings or structures three to six stories high, and that it was expected to take six months to complete. Although the “total cost of project” box on Exhibit #5 has been left blank, the evidence establishes that the capital cost of the project required approval at the Alcan Aluminium Limited board of directors level; that is, at the highest level of the Alcan structure. It is also apparent that the financing of the project was provided by Alcan Aluminium Limited. That is, the decision to proceed with the project was made by Alcan Aluminium Limited and it could not have been carried out by other than Alcan Aluminium.

42. There is no direct evidence of who initiated or proposed the project which was ultimately approved by Alcan Aluminium Limited board of directors. However, Mr. Prichett’s signature appears on the Notice of Project filed with the Ministry of Labour (i.e. Exhibit #5). On the basis of this and the evidence about how the Brockville plant operates, and how capital cost expenditures are generally initiated, it is reasonable to infer that Dr. Meikle or Mr. Prichett either prepared or supervised the preparation of the proposal. However, it is quite clear that whether or not to proceed with the project was not their decision.

43. On Exhibit #5, both the “constructor” and the “owner of project” are identified as “Alcan Aluminum [sic] Limited”. Under section 1(1) of the Occupational Health and Safety Act, “constructor”, “employer”, and “owner” are defined as follows:

“constructor” means a person who undertakes a project for an owner and includes an owner who undertakes all or part of a project by himself or by more than one employer;

“employer” means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services;

“owner” includes a trustee, receiver, mortgagee in possession, tenant, lessee, or occupier of any lands or premises used or to be used as a workplace, and a person who acts for or on behalf of an owner as an agent or delegate.

Mr. Prichett signed Exhibit #5, but he gave no evidence as to why Alcan Aluminum Limited (which I take to be a reference to Alcan Aluminium) Limited was identified on it as the constructor and owner. More specifically, neither Mr. Prichett nor anyone else suggested why Alcan Aluminium Limited was so identified if the construction work was being undertaken by Chemicals as a separate entity.

44. There is no direct evidence of who ran or supervised the construction project, or of who hired the construction employees who performed the work, but on Exhibit #5, Dr. Meikle is identified as the “supervisor in charge of project”. Accordingly, it appears that these functions were performed by or under the supervision of Dr. Meikle.

45. In any case, it is clear that construction tradesmen, the employees who the applicants will obtain bargaining rights for in these applications, were hired to perform the construction work. It is also apparent that these construction employees were treated differently from Chemicals’ regular or production employees at its Brockville plant. In that respect, there is one payroll system for these production employees, who are referred to as “full-time” or “permanent” employees, and another for “temporary” employees, which is what the construction employees who performed the work, and who are the employees in the bargaining unit in these applications, are considered to be.

46. Regular employees are paid a monthly salary with a mid-month advance, resulting in bi-weekly direct deposits into the employees’ bank accounts, by Chemicals through Alcan Smelters and Chemicals Limited, a wholly-owned subsidiary of Alcan Aluminium Limited which provides a payroll service to Chemicals, although notwithstanding its name appears not to be a part of the division which is Chemicals. In addition to deductions for Income Tax, Unemployment Insurance and Canada Pension Plan, permanent employees have deductions made with respect to various benefits which they apparently received. In contrast, the “temporary” construction employees appear to have been paid a wage rate of \$26.00 per hour plus 4 per cent vacation pay directly on a weekly basis. The only deductions made from their gross wages were from Income Tax, Canada Pension Plan and Unemployment Insurance. There is nothing to suggest that they received any benefits in addition to their wages. The construction employees were paid by cheques issued by Alcan Aluminium Limited, and the records of employment issued to them upon the termination of their employment identify Alcan Aluminium Limited as their employer. It appears that at least one plumber or pipefitter “foreman” was hired to supervise that trade. There is nothing to suggest that that was not also the case for the Millwrights.

47. In other words, this construction project was carried out in much the same way as many construction projects which owners carry out themselves. In this case, Alcan Aluminium Limited approved and financed the project. It was the owner and the constructor. I am also satisfied that whatever may be the case for the regular employees at Chemicals Brockville plant, the construction employees hired to perform the construction work there were employees of Alcan Aluminium Limited as well. It may be that the day-to-day overall supervision of their work was by Dr. Meikle or his delegate, but even if Chemicals is properly considered to be the employer of Dr. Meikle and the other permanent employees at the Brockville plant, I assume, in the absence of any evidence, to the contrary,

that this overall supervision would have been the usual overall very general supervision carried out by an owner/constructor. The fact is that construction tradesmen like millwrights, and plumbers and pipefitters require little actual direct supervision, and what they do require in that respect is generally provided by their own trade foreman. There is nothing in the evidence which suggests that it was otherwise in this case. Indeed, it seems unlikely that Dr. Meikle would be able to provide the sort of trade direction or supervision which would be required in that respect. In addition, these construction tradesmen were hired to perform construction work for and were paid by Alcan Aluminium Limited.

48. In argument, it was suggested that if the Board concluded that Chemicals is not the proper employer party, that one of the other corporations, such as Alcan Chemicals Limited (Division of British Alcan Aluminium PLC) in Great Britain or perhaps Alcan Aluminum Corporation in the United States, which are “between” Chemicals and Alcan Aluminium Limited in the Alcan structure, should be. How, wonders counsel, did the applicants manage to leap over them to get to Alcan Aluminium Limited? It is not at all clear that Chemicals reports or is responsible to the British company as opposed to an individual who happens to be the British company’s managing director. But even if it does, the evidence does not suggest that the British company has anything to do with labour relations matters, and specifically construction labour relations matters involving Chemicals. The same is true for the American company, which is in any event a wholly-owned subsidiary of Alcan Aluminium Limited. It appears that Chemicals’ division relationship with the American company has to do with cross border trading matters, and has nothing to do with labour relations matters. In the result, I find that the responding employer to each of these applications is properly identified as “Alcan Aluminium Limited”.

49. I am not sure that “collision” is the right word, but the issue raised in these proceedings does demonstrate some of the differences between the construction industry and non-construction industries, and how that translates into differences between construction and non-construction labour relations. Whether or not these differences result in a “collision” may be a matter of debate, but it is certainly fair to say that the interface between construction and non-construction is not always smooth. The construction industry is different, and the differences between construction and non-construction labour relations have been recognized in the Acts since 1962 when the Labour Relations Amendment Act, 1961-62 was passed in response to “Goldenberg Report”. Since then, the evolution of the Act has been marked by changes which reflect an increasing awareness of the differences between and requirements of construction and non-construction labour relations. This awareness has been reflected in a succession of amendments of the Act which have progressively increased the separation between construction and non-construction labour relations such that today we have a Labour Relations Act which provides for a construction industry division of the Board, and includes a separate part of the Act which is devoted exclusively to the construction industry.

50. The result is that, beginning with applications for certification, the Act treats the construction industry differently. These differences have a direct impact on how applications for certification are dealt with, and more specifically, on bargaining unit issues. The effect of this is that when an application for certification within the meaning of section 128 of the Act is made (i.e. an application by a “trade union” with respect to employees of a “employer”, as defined in section 126), the Board’s discretion in bargaining unit determination is both limited and directed by the construction industry provisions of the Act. (See *Ellis-Don Limited*, [1988] OLRB Rep. Dec. 1254, particularly paragraphs 43-45; application for reconsideration dismissed [1989] OLRB Rep. Mar. 234). In that respect, the Act (and the Board) makes certain assumptions regarding the composition of construction industry bargaining units such that traditional notions of community of interest like those described in *Usarco Ltd.*, *supra*, generally do not apply. (Indeed, it is not all apparent that community of interest considerations continue to have the same significance even for non-construction purposes since *Hospital for Sick Children*, [1985] OLRB Rep. Feb. 266). Certainly, whether or not construction employees who are the subject of a construction industry application for certification (i.e. an application for certification within the



meaning of section 128 made under section 158) share a community of interest with non-construction employees of an employer is irrelevant to the Board's considerations.

51. It is undoubtedly true that being certified under the construction industry provisions of the Act will affect the way in which an employer carries on its business, whether or not other trade unions have bargaining rights for other of its employees, and whether or not construction is the main or even a significant part of the employer's business. These effects on the employer may well be felt in the employer's non-construction activities as well. For example, issues concerning work jurisdiction may arise either as between different construction crafts or trades, or between construction employees and non-construction employees. However, the Board has long taken the view that jurisdictional dispute considerations are not relevant in applications for certification (see, for example, *Semple-Gooder Roofing Ltd.*, [1983] OLRB Rep. Nov. 1908). In any event, that is the way things are under the Act. When an employer ventures into the construction industry it becomes subject to the same "rules" as everyone else who is active in the construction industry, whether or not its "business in the construction industry" is the main or even an important part of its overall business. The rules of the game cannot depend on who or what the employer player is, so long as it is "employer" within the meaning of section 126.

52. I turn now to the alternative proposition of the Alcan business unit; that is, that if the Board concludes, as I have, that Alcan Aluminium Limited is the proper employer party to these proceedings, that the bargaining unit should nevertheless be restricted to the Chemicals' division. Although this question may not be entirely congruent with the issue in which the Machinists and Steelworkers assert an interest, it does appear to overlap with it. Accordingly, I do not find it appropriate to deal with that issue at this time. It is more appropriately dealt with in the next phase of this proceeding.

53. However, I do think it appropriate to make the following observations. The Board has generally not found it appropriate to limit a construction industry bargaining unit in the manner proposed by the Alcan business units except on agreement of the parties, or perhaps where the "division" to which bargaining rights are restricted is either in fact the only division of the employer, or is the only part or division of the employer which conducts all of the employer's business in the construction industry as a separate entity. Further, unlike non-construction units, construction industry bargaining units generally do not depend or reflect an employer's structure. Finally, there is nothing in the Act or otherwise which precludes non-construction industry trade unions from representing construction employees within a broader primarily non-construction bargaining unit, or which precludes construction employees in such a bargaining unit or non-construction employees from performing construction work. In this respect, the attention of the parties is directed to the Board's recent decision (issued after the hearings in this phase of these applications concluded) in *Ontario Hydro*, Board File Nos. 0164-95-R, 0186-95-R, 0187-95-R and 0251-95-R; decision dated February 27, 1997.

54. The hearings in these applications will continue on March 17th and 18th, and on June 18, 1997. The hearings will take place in the Boardroom, 6th Floor, 400 University Avenue, Toronto, Ontario, beginning at 9:30 a.m. each day. The purpose of the hearing is to deal with:

- (1) the appropriate name of the applicants;
  - (2) the bargaining unit description issue;
  - (3) the allegations made against the U.A.; and
  - (4) any other matters arising out of or incidental to these applications.
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**3310-96-U Ron Boyer, Applicant v. International Association of Machinists and Aerospace Workers, Local Lodge 2792 and DDM Plastics Inc., Responding Party**

**Discharge - Duty of Fair Representation - Unfair Labour Practice - Applicant alleging that union did not take his case to arbitration notwithstanding vote of members to go to arbitration - Board not satisfied that applicant's pleading making out prima facie case - Applicant directed to file new fully particularized statement of fact in support of complaint**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair.

**DECISION OF THE BOARD;** March 10, 1997

1. This is a complaint under section 96 of the Labour Relations Act, 1995 in which the applicant alleges that the “responding party” has violated section 74 of the Act by refusing or failing to take his grievance that he has been unjustly discharged by the employer (“DDM”) to arbitration. The relief sought by the applicant is reinstatement in employment with DDM.

2. The responding trade union (the “Machinists”) pleads that the application should be dismissed for “undue delay”, because the remedy sought is beyond the jurisdiction of the Board to grant, and because the application does not disclose a breach of the Act. DDM pleads that the application should be dismissed, or that any relief obtained by the applicant be made the responsibility of the Machinists, on the basis that the applicant's grievance contesting his discharge was settled as between the employer and the union.

3. The applicant pleads that he was terminated by DDM on December 5, 1995. Although he does not plead it, the Machinists' response indicates that a grievance alleging that the applicant had been terminated improperly or unjustly was filed on or about December 11, 1995. The applicant alleges that a vote on the question of whether or not the grievance would be taken to arbitration was taken at a union meeting on January 20, 1995. He alleges that all of the union members at the meeting voted to take the grievance to arbitration, and that only one person suggested that a legal opinion should be obtained. The applicant pleads that notwithstanding this membership vote, the union president and chief steward sought a legal opinion. Further, although the applicant does not specifically say so, it is apparent that his grievance was not in fact taken to arbitration.

4. Section 74 of the Act provides that:

74. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

This provision establishes what is commonly referred to as a “duty of fair representation”. It requires a trade union to represent all employees for whom it is the exclusive bargaining agent in a manner which is free of ill-will, and which is neither arbitrary nor discriminatory. Complaints that a trade union has failed to represent an employee fairly often involve a refusal by the union either to file a grievance for the employee or, if a grievance has been filed, a refusal to take it to arbitration. The duty of fair representation does not require a trade union to take the grievance to arbitration merely because the employee wants it to. Unless the collective agreement stipulates otherwise, the trade union has the authority and indeed the obligation to decide whether, upon a fair consideration of the relevant factors, a grievance will be either filed or taken to arbitration. The fact that a trade union has refused to take a grievance to arbitration will not by itself constitute a breach of the duty of fair representation imposed by section 74. In *Canadian Merchant Service Guild v. Guy Gagnon*, [1984] 1 S.C.R. 509 at p. 527, the

Supreme Court of Canada had occasion to review the principles applicable to a trade union's duty of fair representation as follows:

- (1) The exclusive power conferred on a union to act as spokesman for the employees in a bargaining unit entails a corresponding obligation on the union to fairly represent all employees comprised in the unit.
- (2) When, as is the case here, and is generally the case, the right to take a grievance to arbitration is reserved to the union, the employee does not have an absolute right to arbitration and the union enjoys considerable discretion.
- (3) This discretion must be exercised in good faith, objectively, and honestly, after a thorough study of the grievance and the case, taking into account the significance of the grievance and of the consequences for the employee on the one hand and the legitimate interests of the union on the other.
- (4) The union's decision must not be arbitrary, capricious, discriminatory or wrongful.
- (5) The representation by the union must be fair, genuine and not merely apparent, undertaken with integrity and confidence without serious or major negligence, and without hostility towards the employee.

This is both a useful set of general guidelines against which a trade union's conduct can be measured, and is consistent with the Board's approach in fair representation cases (see, for example, Marcia Robertson, [1990] OLRB Rep. Aug. 886; Balford Lindsay, [1989] OLRB Rep. Mar. 264; Don Roe, [1986] OLRB Rep. Oct. 1429; Jeanne St. Pierre, [1986] OLRB Rep. June 883; Catherine Syme, [1983] OLRB Rep. May 775).

5. The duty of fair representation is an obligation imposed on a trade union, not on an employer. An employer cannot breach section 74. Accordingly, even if it is within the Board's jurisdiction to order an employer to reinstate into employment a person who the Board determines has been treated in a manner contrary to section 74, which I seriously doubt, the fact is that the Board has never done so. The usual remedy for a breach of section 74 is to require that the union take a grievance to arbitration, together with any necessary ancillary relief in that respect. The nature of most complaints that section 74 has been breached is such that the employer will have an interest, or is a proper party for the purpose of fashioning an appropriate remedy in the event that the complainant succeeds (see, William Hill Jr., [1995] OLRB Rep. Jan. 21 (liability) and [1995] OLRB Rep. Oct. 1249 (remedy)). In a case in which a grievance has been settled between a trade union and an employer, and the employer did nothing improper in entering into the settlement, it is very unlikely that the Board would require the employer to submit to arbitration, and another remedy would have to be fashioned.

6. Further, section 96 of the Act gives the Board a broad discretion with respect to whether or not to inquire into a complaint, like this one, which alleges a violation of the Act. However, that discretion should be exercised with caution and only in clear cases. Further, this discretion must be exercised judicially having due regard to the circumstances and labour relations considerations applicable to the particular matter before the Board.

7. Excessive unexplained delay in filing or proceeding with an application is one basis upon which the Board may decline to inquire into an application in the exercise of its discretion under section 96 (the Ontario Divisional Court has confirmed the Board's jurisdiction in that respect in *Re Dhanota and U.A.W. Local 1285*, (1983) 42 O.R. (2d) 73, an application for judicial review of the Board's decision in *Sheller-Globe of Canada Limited*, [1982] OLRB Rep. Jan. 113). It has long been accepted that delay is inimical to labour relations. To put it another way, labour relations delayed are labour relations defeated and denied (*Journal Publishing Co. of Ottawa Ltd. v. Ottawa Newspaper Guild, Local*



205, OLRB et al, (1977) 1 A.C.W.S. 817 (Ontario Court of Appeal)), and delay in labour relations matters often works on fairness and hardship (Re United Headwear and Builtmore - Stetson (Canada) Inc., (1983) 41 O.R. (2d) 287; and see also Dayco (Canada) Ltd. v. National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW-Canada) et al., (1993) 2 S.C.R. 230 (Supreme Court of Canada)). Whenever the resolution of the labour relations dispute is delayed, some prejudice is likely to exist. The Board and the Courts have long recognized that the speedy resolution of a labour relations dispute is both in the public interest and of real importance to those directly involved. Consequently, there is an expectation that allegations that the Labour Relations Act, 1995 or related legislation, has been contravened will be made and pursued within a reasonable time (which time is generally measured in months rather than in years) so that the allegations can be dealt with in a timely manner which is fair to all concerned.

8. The Board's response to motions seeking dismissal of applications under section 96 of the Act on the basis of delay is not a mechanical one. It is neither possible nor appropriate to draw up an exhaustive list of factors which the Board will consider when dealing with a motion to dismiss on the basis of delay. Each situation must be examined and determined according to the merits of the particular case, although the onus is on an applicant to explain what appears to be an inordinate delay in making or pursuing a particular complaint (see The Corporation of the City of Mississauga, [1982] OLRB Rep. Mar. 420; Sheller-Globe of Canada Limited, (supra); Central Stampings Limited, [1984] OLRB Rep. Feb. 215; George Hinkson, [1987] OLRB Rep. Oct. 1246; and John Kohut, [1991] OLRB Rep. Dec. 1367).

9. While there is no fixed rule, in cases which involve a loss of employment (particularly in an economy in which jobs are hard to come by), the Board will generally not dismiss a complaint which makes out a prima facie case on the basis of a delay which is less than one year, except where a responding party demonstrates actual prejudice and there is no satisfactory explanation for the delay. As a general matter, where the delay asserted is less than one year, the onus is on a responding party to demonstrate actual prejudice (or perhaps some other good reason) sufficient to justify dismissing a complaint without a hearing on its merits. Where the delay is more than one year, the onus is on the applicant to provide a satisfactory explanation.

10. In this case, I am not satisfied that the applicant has pleaded a prima facie case. All he alleges is that the Machinists did not take his discharge grievance to arbitration. I have already observed that the mere fact that a trade union has refused to take a grievance to arbitration does not constitute a breach of section 74. As the Board explained in George Lee, [1994] OLRB Rep. Aug. 1009:

3. Section 69 requires a trade union to act fairly, (among other things), in the handling of employee grievances. But section 69 does not require a trade union to carry any particular grievance through to arbitration simply because an employee wishes that this be done. A trade union is entitled to consider the merits of the grievance and the likelihood of its success - that is, whether the facts upon which the employer relies can be successfully rebutted, whether the employer's actions clearly establish a breach of the collective agreement, and so on. The trade union must give each grievance its honest consideration, but so long as the arbitration process involves a significant financial commitment and may have ramifications beyond the individual case, a trade union is not only entitled to settle grievances, in many cases it should do so. In Catherine Syme, [1983] OLRB Rep. May 775, the Board described the situation this way:

20. Section 68 [now 69] requires a trade union to act fairly, inter alia, in the handling of employee grievances. But it does not require a trade union to carry any particular grievance through to arbitration simply because an employee wishes that this be done. A trade union is entitled to consider the merits of the grievance, the likelihood of its success, and the claims or interests of other individuals or groups within the bargaining unit who may be affected by the result of the arbitration. The trade union must give each grievance its honest consideration, but so long as the arbitration process involves a

significant financial commitment and has ramifications beyond the individual case, a trade union is not only entitled to settle grievances, in many cases it should do so. And, as has been pointed out in a number of cases, in assessing the merits of a grievance a trade union official - especially an elected one - cannot be expected to exhibit the skills, ability, training and judgement of a lawyer.

21. Most collective agreements contain a grievance procedure to which resort must be made before a matter can proceed to arbitration. The grievance procedure involves several stages of pre-arbitration discussion in which (as in the present case) the parties seek to amicably resolve their differences. As in the ordinary civil litigation process, it may be in the interests of both parties to seek an "out of court" settlement which is more modest than either of them might have obtained had they been entirely successful before an adjudicator. A settlement is a compromise solution which avoids the costs and uncertainties of litigation, and where it appears that the claim is without legal foundation or cannot be proved it makes little sense to proceed further.

22. These considerations are equally applicable to the settlement of disputes arising out of collective agreements. But there is an important difference. Unlike most parties in civil matters, the trade union and employer are bound together in a relationship which will subsist so long as the employees continue to support the union and the employer remains in existence. That relationship, despite its adversarial aspects and legal veneer, is neither wholly adversarial nor strictly legal. It is essentially an economic partnership in which both parties must be concerned about the ongoing relationship and the equitable resolution of disputes which occasionally arise. Like a successful marriage, a productive bargaining relationship depends upon the development of a spirit of cooperation and compromise. Regardless of the arguable importance of any particular grievance, it will inevitably be only one of many which the parties will be required to resolve during the currency of their relationship; and, if either party obstinately adheres to an unreasonable position, or continually presses trivial claims, the entire settlement process could be undermined, and their long-term relationship prejudiced. It can hardly further mutual trust and respect if union and management officials are required to spend needless hours discussing inconsequential or unfounded grievances. As a practical matter, a rigid insistence on one's "strict legal rights" or an insistence on proceeding to arbitration with doubtful claims is likely to provoke a response in kind, and yield only short term gains. As a matter of good judgement, and in the interest of sound industrial relations, a trade union should make reasonable efforts to settle grievances early in the process. I do not think there is any justification for processing obviously groundless claims simply because an individual employee demands his "day in court". Such position not only represents a waste of the employees' money in counsel and other fees associated with the arbitration process, but could also prejudice the ongoing and informal resolution of disputes, short of arbitration, where there might well be some contractual basis for the union's claim.

4. The fact that a grievance does not go to arbitration does not, in itself, establish any arguable breach of the Labour Relations Act. That is an every day occurrence in the labour relations world. Indeed, if the grievance procedure is working properly, one would expect that cases would be resolved - either by the employer recognizing that it has made a mistake, or the union recognizing that the employer was right, or the union recognizing that whether the employer was right or wrong, its actions can not be successfully challenged at arbitration.

5. I repeat, it is perfectly normal for cases not to proceed to arbitration; and, against that background, it is difficult to conclude that an employee makes out an arguable case of a breach of section 69 merely by stating that fact.

[emphasis supplied; references to section 69 should now be read as section 74]

11. All that the applicant has pleaded in this case is that the Machinists did not take his grievance to arbitration notwithstanding what he says is a vote of the members that it go to arbitration. The duty of fair representation is a duty imposed on the union, not on the members. Similarly, in the absence of a specific provision in the collective agreement to the contrary, the right to decide whether or not a matter goes to arbitration belongs to the trade union, not to an individual member, or to a group of

members. A trade union can put the question of whether a grievance should go to arbitration to a vote of its membership, and can consider the result of such a vote in making its decision in that respect. Indeed, a trade union which decides not to take a grievance to arbitration after the members have voted to do so, may be required to explain its decision, but a membership vote does not trump the proper exercise of a union's discretion in that respect. That is, so long as a trade union does not act in a manner which is arbitrary, discriminatory or in bad faith, it is free to reject the results of a membership vote in favour of taking a grievance to arbitration. On the other hand, neither can a trade union blindly rely on a vote of its members against taking a grievance to arbitration. Such a vote result will not save a union whose decision not to go to arbitration is otherwise arbitrary, discriminatory or in bad faith; or the circumstances are such that the vote should have been given little or no weight (as in perhaps the case of a very unpopular employee, for example).

12. In this case, even assuming that everything he has alleged is true, the applicant has not pleaded anything which suggests that the Machinists acted in a manner which was arbitrary, discriminatory or in bad faith, or which otherwise suggest that the Machinists exercised its discretion to decline to take the applicant's grievance to arbitration in a manner which is contrary to the Act.

13. I recognize that the applicant has filed this complaint himself, apparently without the benefit of legal advice or assistance. He is entitled to do so. However, this complaint is a legal proceeding to which the Board's Rules of Procedure and the Statutory Powers Procedure Act apply. Whether or not he has legal advice or assistance, the applicant is required to plead his case with sufficient particularity to make out a prima facie complaint under the Act, and to enable the Machinists and DDM, and also the Board, to discern what that complaint is. The Rules in that respect apply equally to everyone, whether or not they are lawyers or have legal advice. The fact that someone does not obtain legal advice or representation cannot put them in a better position than someone who does.

14. In this case, I find it appropriate to require the applicant to file a new and fully particularized statement of fact in support of his complaint. In it, he must clearly set out the manner in which he alleges the Machinists have acted contrary to section 74. In the circumstances, he must also explain why he waited until January 14, 1997 (the date it was filed pursuant to the Board's Rules) to file this complaint.

15. If the applicant fails to do so within 14 days of the date of this decision, or if what he does file is still unsatisfactory, this complaint will be dismissed.

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**1949-96-M** Labourers' International Union of North America, Local 1059 ("The Union"), Applicant v. **The Cadillac Fairview Corporation Limited** ("Cadillac Fairview") and Oakdale Cleaners & Maintenance Limited ("Oakdale"), Responding Parties

**Bargaining Rights - Conciliation - Sale of a Business - Reference - Union representing bargaining unit of building cleaners employed by landlord - Bill 40 deeming subsequent contracting out to cleaning contractor to be sale of a business - Union giving notice to bargain to landlord and applying for conciliation - Landlord objecting to appointment of conciliation officer on ground that union no longer having bargaining rights as against it - Board finding that deemed sale of a business did not terminate union's bargaining rights with landlord or wipe out its collective agreement - Board advising Minister that she has authority to make requested appointment of conciliation officer**

**BEFORE:** *R. O. MacDowell*, Chair, and Board Members *J. A. Rundle* and *D. A. Patterson*.



**APPEARANCES:** *Mark J. Lewis* and *Irena Nowicki* for the applicant; *Paul Boniferro*, *Christine Cowan* and *Scott Baird* for Cadillac Fairview; no one for Oakdale Cleaners.

**DECISION OF R. O. MacDOWELL, CHAIR, AND BOARD MEMBER D. A. PATTERSON;**  
April 4, 1997

### **I - The Ministerial Reference**

1. This is a reference from the Minister of Labour that comes before the Board under section 115 of the Labour Relations Act, 1995. That section reads as follows:

115. (1) The Minister may refer to the Board any question which in his or her opinion relates to the exercise of his or her powers under this Act and the Board shall report its decision on the question.

(2) If the Minister refers to the Board a question involving the applicability of section 68 (declaration of successor union) or 69 (sale of a business), the Board has the powers it would have if an interested party had applied to the Board for such a determination and may give such directions as to the conduct of its proceedings as it considers advisable.

2. The Minister's reference is framed this way:

1. On April 2, 1996, the Union requested the appointment of a conciliation officer pursuant to section 18 of the Labour Relations Act, 1995 ("Act").
2. By letters dated June 10 and July 25, 1996, Cadillac Fairview objected to the appointment of the conciliation officer.
3. On or about June 1, 1993, the Union was certified as the bargaining agent for all cleaning staff of Cadillac Fairview at Masonville Place, 1680 Richmond Street, London, Ontario. The Union and Cadillac Fairview entered into a collective agreement effective from September 1, 1993 to June 30, 1996.
4. In or about June 1995, the cleaning work at Masonville Place was contracted out to Oakdale Cleaners. By letter dated June 1, 1995, Cadillac Fairview informed the Union that Oakdale Cleaners will become the successor employer for the cleaning staff effective June 17, 1995.
5. According to the Application for the Appointment of a Conciliation Officer, the Union gave written notice to bargain to Cadillac Fairview on April 1, 1996.
6. By letters dated June 10 and July 25, 1996, Cadillac Fairview objected to the appointment of a conciliation officer on the ground that the Union no longer has any collective bargaining or other representation rights in connection with the cleaning staff of Cadillac Fairview at Masonville Place.
7. In response, the Union by letter dated June 28, 1996 takes the position that contracting out the cleaning work at Masonville Place does not extinguish the Union's bargaining rights or the collective agreement in place between the Union and Cadillac Fairview.
8. The Minister is of the opinion that the circumstances surrounding the request by the Union raise a question as to her authority to appoint a conciliation officer in this matter.

Accordingly, the following question is referred to the Ontario Labour Relations Board for its advice:

Does the Minister of Labour have the authority to make the requested appointment of a conciliation officer?

3. The answer to the Minister's question depends upon whether the Union has a continuing collective bargaining relationship with Cadillac Fairview, and whether the Union and Cadillac Fairview are obliged to engage in negotiations with a view to concluding a collective agreement. If these conditions obtain, then the Minister can appoint a conciliation officer to assist the parties in their negotiating process.

4. The background is not really in dispute.

## **II - Background**

5. Cadillac Fairview owns and operates a shopping mall in the City of London known as "Masonville Place". The mall buildings have to be cleaned on a regular basis. In order to get this cleaning done, Cadillac Fairview has several options: Cadillac Fairview can use its own employees to do the work; Cadillac Fairview can engage the services of an outside cleaning contractor which will use its own employees; or Cadillac Fairview can divide the cleaning work between its own employees and those of an outside contractor.

6. In recent years, there has always been an outside contractor on the scene performing at least some of the cleaning work at Masonville Place. The cleaning work at Masonville Place has never been done exclusively by employees of Cadillac Fairview. However, since June 1995, no Cadillac Fairview employees have been involved at all.

7. It is Cadillac Fairview's decision not to do any of the cleaning work itself which leads to the issue posed by the Minister.

\* \* \* \* \*

8. In or about June 1, 1993, the Union was certified by the Ontario Labour Relations Board as bargaining agent for a "bargaining unit" described as follows:

"all cleaning staff of Cadillac Fairview Corporation Limited at Masonville Place, 1680 Richmond Street in the City of London, save and except forepersons, persons above the rank of Foreperson, office and clerical staff, retail, technical and sales staff, security guards, maintenance staff and staff employed at Links Indoor Miniature Golf Course."

As will be seen, this bargaining unit comprises cleaners working for Cadillac Fairview at Masonville Place. Those cleaners, whatever that number, are represented by the Union.

9. At the time of the certification, there were, of course, a number of Cadillac Fairview employees doing cleaning work at Masonville Place. That is why the trade union was able to make its certification application. However, we should note that, at the time of the Union's certification, there was also an outside contractor on the scene. So called "night cleaning work" was performed by a subcontractor known as Oakdale Cleaners and Maintenance Ltd. ("Oakdale"). It still is.

10. Oakdale has its own employees, its own separate collective bargaining relationship with the Union, and its own collective agreement covering Oakdale employees working at Masonville Place. Oakdale's last collective agreement with the Union (now expired) ran from September 1993 to June 1996. Oakdale's current collective agreement with the Union runs from July 1996 to the end of May 1998.

11. Following the Cadillac Fairview certification in June 1993, the Union and Cadillac Fairview entered into negotiations for a collective agreement to cover the Cadillac Fairview employees doing cleaning at Masonville Place. Those negotiations were unsuccessful and, eventually, the terms of a first

collective agreement were settled by arbitration. That first collective agreement ran from September 1, 1993 to June 30, 1996, and contains a recognition clause that mirrors the bargaining unit set out in the OLRB certificate. The agreement confirms that the Union is the exclusive bargaining agent for cleaners employed by Cadillac Fairview at Masonville Place.

12. It appears that in December 1994 Cadillac Fairview expanded the number of its own employees engaged in cleaning work by taking on some employees who had formerly worked on the site for a firm call Martin Building and Maintenance. Such expansion would have increased the size of the Union's Cadillac Fairview bargaining unit. On the other hand, the Union asserts that between 1993 and 1995 certain cleaning work was "contracted out" as well. This would decrease the size of the Union's bargaining unit of Cadillac Fairview employees. Nothing turns on these fluctuations, save that they illustrate the point mentioned above: as owner of the mall, Cadillac Fairview could have the work performed by its own employees, or could use the services of an outside cleaning contractor, or could divide the work between its own employees and those of an outside contractor. And, if Cadillac Fairview chose to use its own employees, they would fall within the scope of Cadillac Fairview's collective agreement with the Union.

13. In June 1995, Cadillac Fairview advised the Union that it would no longer be doing any cleaning work in the mall with its own employees. Cadillac Fairview told the Union that the work formerly performed by Cadillac Fairview employees would henceforth be performed by Oakdale with Oakdale's own forces. As as mid-June 1995, therefore, the Cadillac Fairview bargaining unit was "empty" (if it continued to exist at all - see below) because Cadillac Fairview no longer employed any workers doing cleaning at Masonville Place. Conversely, Oakdale had more work to do with its own labour force under its own collective agreement.

14. It is common ground that the transfer of work from Cadillac Fairview as "owner", to Oakville as "contractor" would constitute a "deemed sale of the business" within the meaning of section 64.2 of the Labour Relations Act - a provision of "Bill 40" that was in force in June 1995, at the time of the transfer. (It has since been repealed.) Since Bill 40 "deemed" this transfer of work to be a "sale of the business" between Cadillac Fairview as "predecessor" and Oakdale as "successor", section 64(2) of the Act applied to bind Oakdale to the Cadillac Fairview collective agreement. Section 64(2) of Bill 40 read this way:

"If the predecessor employer [Cadillac Fairview] is bound by a collective agreement, the successor employer [Oakdale] is bound by it as if the successor employer were the predecessor employer, until the Board declares otherwise."

The Act (then and now) went on to give the Board a variety of powers to sort out any conflicting bargaining or collective agreement rights that resulted from the operation of the successorship provisions of the statute (see Bill 40 section 64(2.1)-(13), and compare the current statute sections 69(3)-(13)).

15. However, as it turned out, there was no application to the Board to sort out conflicting bargaining rights, or to redefine the bargaining unit perimeter, or to "otherwise declare" something different from the consequences of successorship spelled out in section 64(2), reproduced above. In particular, there was no application by Cadillac Fairview to question, revise or terminate either the 1993-1996 collective agreement with the Union or the Union's bargaining rights. There were no applications to the Board at all. The Union and Oakdale sorted out the situation in a manner satisfactory to themselves, without any application to the Board.

16. Essentially, Oakdale agreed to hire the workers formerly employed by Cadillac Fairview at Masonville Place and "to abide by and be bound to all the terms of the collective agreement between



the Union and Cadillac Fairview Corporation Limited, as if an original party thereto". We do not know what that means in practice, but no one at Oakdale has raised any concerns about it. And, of course, Cadillac Fairview no longer has employees doing cleaning work at Masonville Place.

17. As we have already noted, the collective agreement between the Union and Cadillac Fairview had a term of operation from September 1, 1993 to June 30, 1996. On April 4, 1996, the Union gave notice of its desire to commence bargaining for a new collective agreement that would be applicable to cleaners at Masonville Place, in the event that Cadillac Fairview employed such cleaners as it had done in the past. Article 25 of the collective agreement provides:

ARTICLE 25 - DURATION OF AGREEMENT

25.01 This Agreement shall continue in full force and effect from September 1, 1993 until June 30, 1996, and thereafter shall be automatically renewed and remain in force from year to year from its expiration date, unless, within the period of ninety (90) days before the Agreement ceases to operate, either party gives notice in writing to the other party of its desire to bargain with a view to the renewal with or without modifications of the Agreement.

25.02 On receipt of such notice, the parties to the Agreement shall convene a meeting within fifteen (15) days and bargain in good faith to endeavour to reach an agreement.

18. Cadillac Fairview replied that the Union no longer had bargaining rights in respect of Masonville Place and, further, that the Union had not had any bargaining rights since June 1995, when the last cleaning work was transferred to Oakdale. Cadillac Fairview took the position that it was not required to bargain with the Union.

19. No collective bargaining has taken place. The Union has requested the appointment of a Conciliation Officer pursuant to section 18 of the Labour Relations Act, 1995:

18. (1) Where notice has been given under section 16 or 59, the Minister, upon the request of either party, shall appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

It is that request which prompted the Minister's reference to the Board.

20. There is no indication that Cadillac Fairview has any plans to use its own employees to do cleaning work at Masonville Place. Accordingly, if the Union retains bargaining rights at that location, any collective bargaining would be undertaken in respect of a bargaining unit that is currently "empty". As things now stand, there are no employees to whom any new collective agreement could apply. On the other hand, Cadillac Fairview could easily employ such workers, as it has done from time to time in the past.

### **III - Discussion**

21. We might begin by observing that "bargaining rights" are a creature of statute. There is no common law foundation for the Union's exclusive bargaining agency. That concept is created by and rooted in the statute. And, the statute prescribes, in considerable detail, how (and when) such statutory rights may be acquired, exercised or terminated.

22. A trade union can be "certified" as the exclusive bargaining agent for a group of employees called a "bargaining unit" when a majority of those employees want the trade union to represent them. Certification gives the union bargaining rights - which is to say, confers on the union the status of exclusive bargaining agent, and the right to represent a group of employees for collective bargaining

purposes. Thereafter, it does not matter if there is a change in the composition or identity of employees in the bargaining unit - as Laskin J. noted in *Terra Nova Motor Inn Ltd.*, 74 CLLC ¶14253:

At the risk of being unnecessarily obvious, I must point out that the taking of a count of employees in order to satisfy certification requirements of proof that a majority are members of the applicant union does not mean that the certification and the union's status as bargaining agent continue to depend on the very employees remaining in the employer's employ. Fixing the number of employees as of a particular time to enable a count to be made does not mean that the certificate which a union may obtain on that basis is tied to the identical employees or to that number. The subsequent enlargement or contraction of the work force does not alone affect the validity of the certificate and indeed, once a collective agreement is negotiated the certificate has served its purpose and is, for all practical purposes, spent.

Once bargaining rights are established, the size of the unit can expand or contract without affecting those bargaining rights.

23. The procedure for terminating bargaining rights is found in sections 63-66 of the Labour Relations Act, 1995. Briefly put, a union's bargaining rights can be terminated if there is a timely application by employees (section 63 plus section 67), if the original certificate was obtained by fraud (section 64), or if the union "sleeps on its bargaining rights" - that is, if the union fails to give a timely notice to bargain, or having given such notice, allows 60 days to go by without seeking to bargain. In addition, a trade union may have slept on its rights for so long that the Board can properly conclude, as a fact, that its bargaining rights have been abandoned and no longer exist (see the decision of the Divisional Court in *Re Hugh Murray Ltd.* (1982), 125 D.L.R. (3rd) 568). These are the circumstances in which bargaining rights may be terminated by a declaration of the Board.

24. None of these termination provisions or principles are applicable in this case. The Union acquired bargaining rights by certification in 1993, but thereafter, no one sought to engage the termination provisions of the Act to bring an end to the Union's status as bargaining agent. Nor has the Union "slept on" or abandoned its bargaining rights. On the contrary. The Union is trying to assert its bargaining rights by giving timely notice to bargain pursuant to both article 25.01 of the 1993-1996 collective agreement with Cadillac Fairview and section 59 of the Labour Relations Act, 1995.

25. There has been no application to terminate the Union's bargaining rights, and there is no obvious reason why its bargaining rights or collective agreement have disappeared. Both parties to that agreement continue to exist. Neither of them has dissolved. Moreover, under section 58(3) of the Labour Relations Act, 1995, a collective agreement cannot be terminated by the parties before it ceases to operate in accordance with its provisions without the consent of the Labour Relations Board on the joint application of the parties. Neither of the parties has applied to the Board for early termination of the agreement, and no one suggests that the collective agreement is void because of employer interference or other impropriety (see section 53 of the Act). Finally, as the Court of Appeal noted in *Re Brayshaws Steel Ltd. and United Steelworkers of America* (1972), 26 D.L.R. (3rd) 153, the Board has no inherent jurisdiction to determine that a valid collective agreement is inoperative. That result can only obtain in accordance with the terms of the statute (for example, if the Board so declares following a successful termination application - see section 63(13) of the Labour Relations Act, 1995).

26. In summary, the Union's bargaining rights rest upon its 1993 certificate and the 1993-1996 collective agreement; and both foundations remain undisturbed. There has been no application to terminate the Union's bargaining rights or collective agreement and, so far as we can see, no platform for making such application. Nor have the Union or employer done anything to bring the bargaining rights or collective agreement to an end.

27. Did the “deemed sale of a business” from Cadillac Fairview to Oakdale in 1995 terminate the Union’s bargaining rights with Cadillac Fairview and wipe out its collective agreement? We do not think so. That is not what the successor provisions said in 1995, nor is it a necessary implication from the statutory language, then or now.

28. Under the section of the Act in force in June 1995, Oakdale, (“the successor”) became bound by the Cadillac Fairview collective agreement as if it were Cadillac Fairview (“the predecessor”) - until the Board declares otherwise. The section binds Oakdale to Cadillac Fairview’s obligations. But the section does not relieve Cadillac Fairview of those obligations, or terminate Cadillac Fairview’s collective agreement. As the Board observed in *Cabral Foods Inc.*, [1985] OLRB Rep. Feb. 165 at paragraph 9:

... Furthermore, section 63 [section 64 in 1995 and now section 69] does not extinguish any of the predecessor employer’s collective bargaining or collective agreement obligations. When a sale occurs during the term of a collective agreement covering a unit of employees of the predecessor engaged in the sole business, the result of the operation of section 63 is that a separate collective agreement is effectively created between the successor and the Union party to that agreement, covering persons employed by the successor in the sole business. There will then be two collective agreements and two collective bargaining relationships when once there was only one. Of course, one of those agreements will have nothing to operate on if the predecessor no longer has employees who fall within its bargaining unit description, but the absence of such employees no more terminates the predecessor’s obligations than it would if a sale had not taken place.

29. The fact that the bargaining unit is empty may seem a little unusual (although, perhaps, not so unusual these days, as plants shut down and reopen in response to commercial pressure). But the absence of employees in a bargaining unit does not, in itself, result in either a termination of bargaining rights, or the cancellation of any collective agreement pertaining to that undertaking.

30. Earlier on, we noted that following the transfer of work to Oakdale in June 1995, no one came to the Board for clarification of how the successor rights provisions applied. We might also note, therefore, that the successorship provisions do contemplate a termination of bargaining rights in at least some circumstances. That can occur if the successor changes the character of the business, or if the successor intermingles the employees of the acquired business with another of its businesses. In both cases, the Board may terminate bargaining rights on the application of an interested party. So the notion of terminating bargaining rights is not completely foreign to the successorship framework. But the sections contemplating termination of bargaining rights do not give that option to the predecessor employer; and the fact that the successorship provisions contemplate terminating bargaining rights in specific circumstances makes it much more difficult to “imply” that result in other circumstances.

31. The successorship provisions deal with the assumption of obligations by a successor. They do not cancel the obligations of a predecessor. And, we are reluctant to “read in” such consequence which the legislature could have provided for, but did not.

32. We are satisfied, therefore, that the deemed sale to Oakdale in 1995 did not terminate the Union’s bargaining right or its collective agreement with Cadillac Fairview. Accordingly, the Union was entitled to give notice to bargain in accordance with section 59 of the Labour Relations Act, 1995 and article 25 of the collective agreement.

\* \* \* \* \*

33. We recognize, of course, that collective bargaining in respect of an empty bargaining unit poses both practical and legal difficulties - particularly in the present statutory regime. Because there are no employees actively at work in the bargaining unit, it may be difficult to formulate demands, since, at most, the Union would be negotiating about the terms upon which new employees would be



hired at some time in the future. That exercise is somewhat speculative, and since there are no employees to go on strike, there may not be much pressure on the employer to make concessions. Nor is it clear how the new collective agreement could be ratified - a mandatory requirement before a proposed collective agreement can come into effect (see section 44 of the Labour Relations Act, 1995). In other words, it is not clear that bargaining would make much progress, or that the bargaining process could be finalized.

34. On the other hand, there is nothing unusual about a trade union negotiating contract language governing the terms on which new employees will be hired. That is a common feature of collective agreements in the construction industry where the labour force is particularly volatile; however, any contract language will have that effect when the work force is likely to grow. Moreover, given the ease with which Cadillac Fairview can transfer work to outside contractors, or take it back again, it would not be surprising if the Union wished to bargain restrictions on those transfers, or provisions which discouraged them. Conversely, it is conceivable that the Union might wish to bargain rates below those charged by outside contractors, so as to encourage Cadillac Fairview to bring the work back - that is to hire its own employees rather than subcontracting the work to firms like Oakdale.

35. We do not think that it is useful to speculate. While the empty bargaining unit poses a practical and legal difficulty, we cannot say that there is nothing to bargain about at all, or that bargaining would be completely pointless or futile. And the fact that the Union may not be able to make much progress or may not be able to conclude a collective agreement, does not mean that the bargaining process should not start or that a Conciliation Officer would be of no assistance.

36. Counsel for Cadillac Fairview asked, parenthetically: "How long will these bargaining rights subsist? Is the company obliged to bargain forever in respect of an empty bargaining unit?"

37. There is much to be said for this concern. However, at this stage, it is unwise to speculate on the extent of the employer's future obligations, or the way in which various statutory provisions might impinge upon them. For the fact is, the disposition of work at this location is extremely fluid, the "emptiness" of the bargaining unit is relatively recent, and there is no undertaking from Cadillac Fairview that the work will not be shifted back to the bargaining unit with the same ease that it was shifted in the other direction. This is not like the "sale" of an industrial plant which, once finally disposed off, is unlikely to be reacquired. One cannot at this stage say that the bargaining unit will remain empty any more than one can characterize bargaining as a totally academic exercise. And, any burden on the employer can be relieved by giving a sensible reading to the section 17 "duty to bargain", and by keeping in mind that it may not be possible to complete the bargaining process. But, we repeat, this does not mean that there is no point to bargaining at all.

38. For the foregoing reasons, while we have some reservations about the utility or finality of any bargaining process engaged in at this time, we are satisfied that the Union does retain bargaining rights, that there is a right to engage in bargaining, and that there is the right to request the assistance of a Conciliation Officer.

#### **IV - Advice to the Minister**

39. In her reference, the Minister of Labour has posed the following question:

"Does the Minister of Labour have the authority to make the requested appointment of a Conciliation Officer?"

40. In our view, the answer to that question is: yes.

**DECISION OF BOARD MEMBER J. A. RUNDLE; April 4, 1997**

1. The union contends that Cadillac Fairview's contracting out the cleaning work at Masonville Place does not extinguish the union's bargaining rights or the collective agreement in place between the parties. This is probably a technically correct result: there is a continuing collective bargaining relationship between the union and Cadillac Fairview. Obviously, the union is arguing that Cadillac Fairview is therefore obliged to engage in negotiations with it with a view to concluding a new collective agreement. The question one is left with, however, is: on whose behalf will the bargaining agent be negotiating?

2. The agent (Labourers' International Union of North America, Local 1059) was duly certified to represent the Cadillac Fairview employees at Masonville place and in order to become certified, it had to have employees in the unit who would have chosen it to be their agent in the first place. The decision states at paragraph 9: "This is why the trade union was able to make its certification application".

3. When Cadillac Fairview contracted out its cleaning functions to Oakdale, a deemed sale of a business occurred pursuant to section 64.2 of the old Act, which was in place at the time of the transfer. Paragraph 16 of the decision states:

16. Essentially, Oakdale agreed to hire the workers formerly employed by Cadillac Fairview at Masonville Place and "to abide by and be bound to all the terms of the collective agreement between the Union and Cadillac Fairview Corporation Limited, as if an original party thereto". We do not know what that means in practice, but no one at Oakdale has raised any concerns about it. And, of course, Cadillac Fairview no longer has employees doing cleaning work at Masonville Place.

4. It seems obvious what that means in practice: the employees are now employed by Oakdale and Oakdale should consider itself the signatory between the union and Cadillac Fairview. Such conduct is reflected in both the old statute and the new. Subsection 64(2) of the old Act stated:

If the predecessor employer is bound by a collective agreement, the successor employer is bound by it as if the successor employer were the predecessor employer, until the Board declares otherwise.

The new Act elaborates on this provision, but its essence remains the same: subsection 69(2) now states in part:

Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his, her or its business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if the person had been a party thereto ...

[emphasis added]

5. The new Act further provides that the union is entitled to serve its notice of desire to bargain on the successor employer; subsection 69(3) states:

(3) Where an employer on behalf of whose employees a trade union or council of trade unions, as the case may be, has been certified as bargaining agent or has given or is entitled to give notice under section 16 or 59, sells his, her or its business, the trade union, or council of trade unions continues, until the Board otherwise declares, to be the bargaining agent for the employees of the person to whom the business was sold in the like bargaining unit in that business, and the trade union or council of trade unions is entitled to give to the person to whom the business was sold a written notice of its desire to bargain with a view to making a collective agreement or the renewal, with or without modifications, of the agreement then in operation and such notice has the same effect as a notice under section 16 or 59, as the case requires.

Under section 69(3), if the union continues to be the bargaining agent for the employees, following what under Bill 40 was deemed to be a “sale of a business”, the union should be giving notice to Oakdale under section 59.

6. The Act contemplates a termination of bargaining rights in circumstances where the successor causes a change in the employment relationship. This assumes the bargaining rights have been (deemed) transferred to the successor. The Board should not be endorsing the appointment of a conciliation officer at this time. The successorship having occurred, and the original bargaining unit being “empty”, practical reality dictates that bargaining should be undertaken by those parties with something at stake in the process. The Board should not engage in speculation; indeed, speculation should not be countenanced when a practical solution is available that would neither prolong the negotiations nor make an absurdity of the statute.

7. The concept of “agent” assumes a principal on whose behalf the agent speaks or negotiates. The Terra Nova Motor Inn Ltd., 74 CLLC ¶14,253 decision speaks to expanding and contracting bargaining units. It does not contemplate an absence of employees. While both parties to the collective agreement continue to exist, the bargaining agent has no employees in its unit. In paragraph 26, the draft decision states: “[t]here has been no application to terminate the Union’s bargaining rights or collective agreement and, so far as we can see, no platform for making such an application”. What is absent is the platform to negotiate. The agent has no employees on whose behalf it can speak. The emperor has no clothes. The majority decision acknowledges that an empty bargaining unit is unusual. Equally unusual is a bargaining agent giving notice of its desire to bargain in the absence of employees in the unit.

8. If obligations of the predecessor are not cancelled, there arises the prospect of two agents bargaining for the same employees. This is the prospect which the excerpt from the Cabral Foods Inc., [1985] OLRB Rep. Feb. 165 at paragraph 28 of the decision addresses; for ease of reference, I reproduce the cite:

... Furthermore, section 63 [section 64 in 1995 and now section 69] does not extinguish any of the predecessor employer’s collective bargaining or collective agreement obligations. When a sale occurs during the term of a collective agreement covering a unit of employees of the predecessor engaged in the sole business, the result of the operation of section 63 is that a separate collective agreement is effectively created between the successor and the Union party to that agreement, covering persons employed by the successor in the sole business. There will then be two collective agreements and two collective bargaining relationships when once there was only one. Of course, one of those agreements will have nothing to operate on if the predecessor no longer has employees who fall within its bargaining unit description, but the absence of such employees no more terminates the predecessor’s obligations than it would if a sale had not taken place.

With respect, while the survival of the predecessor’s bargaining rights might be technically correct, one cannot pretend a sale has not taken place when in fact a sale has (or has been deemed to have) taken place. Two collective bargaining relationships have been created. One of those relationships has “nothing to operate on” by virtue of its empty unit, no platform on which to negotiate.

9. Allowing both relationships to subsist leads to an absurdity, and the Labour Relations Act speaks to this by precluding the existence of two simultaneous collective agreements. Section 55 states:

There shall be only one collective agreement at a time between a trade union or council of trade unions and an employer or employers’ organization with respect to the employees in the bargaining unit defined in the collective agreement.

Conceivably, at Masonville Place, there could have been two collective bargaining relationships as between the union (with separately defined bargaining units) and two employers (Cadillac Fairview



and Oakdale). Once one employer has divested itself of its employees, vacating the bargaining unit, only one should be allowed to survive.

10. The Board should determine whose or which relationship should be allowed to exist. Until the propriety of the bargaining parties has been established, the appointment of a conciliation officer is premature. The Minister's question should be answered in the negative.

11. It could further be argued that Cadillac Fairview with no employees in the work force at Masonville Place, would have been content - indeed, was content - to let the collective agreement lapse. Article 25 of the agreement states, in part:

25.01 This Agreement shall continue in full force and effect from September 1, 1993 until June 30, 1996, and thereafter shall be automatically renewed and remain in force from year to year from its expiration date, unless, within the period of ninety (90) days before the Agreement ceases to operate, either party gives notice in writing to the other party of its desire to bargain with a view to the renewal with or without modifications of the Agreement.

This provision gives automatic life to an agreement after its date of expiration in the event that the parties to it do nothing toward a renewal of the agreement. In the instant case, the agreement arguably expired on June 30, 1996, precisely because the union exercised its right to give notice of desire to bargain within the specified period. Cadillac Fairview perhaps correctly asks: "How long will these bargaining rights subsist? Is the company obliged to bargain forever in respect of an empty bargaining unit"?

12. Bargaining will indeed be an "academic exercise" to use the words of the majority - when no effective conclusion is foreseeable: that is, there is no one in the unit to ratify a newly-negotiated agreement. Furthermore, on whose behalf will the negotiations take place? What kinds of demands can the bargaining agent make of the employer when there are no instructing principals to formulate the demands? By vacating its bargaining unit, the bargaining agent has relinquished its de facto rights. The majority is apt in questioning the utility of the bargaining process; the appointment of a conciliation officer will merely underscore the futility of the exercise.

13. For the above reasons, I would have answered the question posed by the Minister in the negative.

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**2510-96-JD Ecodyne Limited, Applicant v. Labourers' International Union of North America, Local 1036 ("Labourers") and United Brotherhood of Carpenters and Joiners of America, Local 446 ("Carpenters"), Responding Parties**

**Construction Industry - Jurisdictional Dispute - Practice and Procedure - Board describing nature of onus in jurisdictional dispute complaints - Carpenters' union and Labourers' union disputing assignment of certain tending and clean-up work associated with erection of water cooling tower - Board concluding that work should have been assigned to Labourers' union**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair, and Board Members *F. B. Reaume* and *G. McMenemy*.

**APPEARANCES:** *Carl Peterson, Paul Holmes and Don Skelton* for the applicant; *Dan Greco and Gil Scott* for United Brotherhood of Carpenters and Joiners of America, Local 446; *L. A. Richmond, B. Suppa and T. Neil* for Labourers' International Union of North America, Local 1036.

**DECISION OF G. T. SURDYKOWSKI, VICE-CHAIR, AND BOARD MEMBER G. MCMEN-EMY; March 20, 1997**

1. This is a jurisdictional dispute complaint under section 99 of the Labour Relations Act, 1995.
2. A consultation was convened on February 28, 1997. No party sought leave to call any evidence. Nor did anyone suggest that this complaint could not be disposed of without a formal hearing. The Board finds it appropriate to determine this complaint on the basis of the materials filed by the parties and their representations at the consultation.
3. This complaint was filed by the employer ("Ecodyne") on November 15, 1996. The Carpenters, whose members were assigned the work in dispute, and which is therefore allied in interest with Ecodyne, filed a brief which is dated November 28, 1996. However, this brief was not received by the Board until February 20, 1997. The Labourers, whose grievance complaining about the assignment of the work in dispute led to this jurisdictional dispute complaint, filed its brief on February 19, 1997. A week later, one and two days before the consultation, the Labourers filed additional area practice materials and several National Joint Board decisions upon which it relied at the consultation. Although neither Ecodyne nor the Carpenters objected to these additional filings, both pointed out that they had not had an opportunity to investigate the additional area practice materials filed on the eve of the hearing. Since no one objected to the admissibility of these filings, the Board will take the circumstances into account in determining what weight, if any, is to be given to the material.
4. The material facts are not in dispute.
5. Ecodyne is based in Oakville, Ontario. Its business includes the installation of various water technology systems in industrial plants, power generating plants and municipal water treatment plants across Canada and in 30 countries around the world.
6. Ecodyne has a Cooling Products Division which is a major player in the installation of cooling towers in Ontario. It designs, erects, inspects, operates, maintains and repairs cooling towers, and also provides spare parts for them. Ecodyne has been involved in the erection of cooling powers for more than sixty years.
7. On or about May 17, 1996, Ecodyne obtained a subcontract for the erection of a new water cooling tower at the Algoma Steel Mill in Sault Ste. Marie, Ontario and for the supply and installation of the requisite fire protection equipment for the cooling tower. The subcontract did not include the cement foundations for the cooling tower. These were constructed by a form work contractor and were already in place and ready for Ecodyne when it commenced its work.
8. The cooling tower is a large wooden structure which houses the mechanical and electrical equipment which cools the water.
9. Ecodyne employed one non-union superintendent to oversee the construction of the cooling tower. It employed two working carpenter foremen, seven journeymen carpenters and one carpenters' apprentice, all of whom are members of the Carpenters, to erect the wooden structure.
10. The materials which were used to build the cooling tower were largely prefabricated, and came together with a set of installation drawings. The materials were delivered in packages of plywood, 2 x 4's, 2 x 6's and 4 x 4's which are marked and designated for installation. It is very much like a wooden mechano-set. The materials were off-loaded next to the foundation of the cooling tower.

11. The installation process which was followed is as follows. Each working carpenter's foreman would read the drawings, would select the appropriate materials, and would then deliver these materials to the appropriate carpenters, who worked in pairs, in the appropriate location. The carpenters would then commence the actual erection, including cutting plywood decking to specification as directed by the working carpenter's foreman.

12. The Labourers' claim the work of tending the pairs of carpenters, and the clean-up work associated with the job. That is the work in dispute.

13. At the consultation, there was some dispute concerning who bears the onus in this complaint. Jurisdictional disputes are atypical proceedings, particularly where the consultation process is invoked, as it almost always is. A jurisdictional dispute complaint is not always brought by the party which asserts that the work assignment is incorrect. Many such complaints, like this one, are brought by either the employer, or by the trade union which obtained the work, generally in response to a grievance or the threat of one from a trade union which asserts that the work in dispute should have been assigned to its members, in either case with a view to obtaining a confirmatory decision from the Board. The fact is that the determination of most jurisdictional disputes complaints will not depend on who bears the onus, but a fair reading of the Board's jurisprudence is that the party which asserts that a work assignment was improper bears the onus of persuading the Board that the work assignment should be interfered with, whether it is the complainant or a responding party in the actual jurisdictional dispute complaint proceeding. This is as it should be, and is consistent with the traditional legal notion that the party which asserts a wrong must establish it.

14. In jurisdictional dispute complaints, the Board will consider everything which is relevant. Accordingly, it is neither possible nor appropriate to describe an exhaustive list of factors, or to construct or mechanically apply some formula or "checklist" in that respect. Nevertheless, the Board has developed a general practice, which has been accepted by the construction industry, of referring to several broad overlapping categories and factors which it will consider. These were first set out some 30 years ago in *Canada Millwrights Ltd.*, [1967] OLRB Rep. May 195, as follows:

- trade union constitutions and collective agreement;
- skill, training and safety;
- economy and efficiency;
- employer practice and preference;
- area practice.

15. In any given case, some of these five general factors will be of little or no assistance. For example, in recent years, the work jurisdictions asserted by construction trade unions in their constitutions and collective agreements have become so broad that these will often not favour the claim of any trade union involved in a jurisdictional dispute, particularly one concerning work which falls within an overlap between work jurisdictions, as many, if not most, construction jurisdictional disputes do. This reflects that fact that there are a few sharp boundaries between craft or trade work jurisdiction in the construction industry, and that construction trade unions tend to be vigilant in both protecting and pursuing opportunities to expand their work jurisdictions. As a result, constitutions and collective agreements will often be of little assistance. They are rarely determinative. (In that respect, however, we note that a trade union which has no collective agreement with the employer which assigned the work in dispute is likely to have a very difficult time in either overturning or defending a disputed assignment of work. However, such a trade union is not necessarily bound to fail, and concomitantly,



the trade union which has a collective agreement with the assigning employer will not necessarily succeed in fending off a claim for the work by a trade union without an applicable collective agreement - see, for example, Brunswick Drywall Limited, [1982] OLRB Rep. Aug. 1143; Pigott Construction Limited, [1992] OLRB Rep. Jun. 748 ("Pigott II"); and see, Groff & Associates Ltd., [1994] OLRB Rep. July 846 regarding the difficulties which a trade without an applicable collective agreement will face.)

16. Although it will often not be the case, a single factor be determinative in a jurisdictional dispute complaint. Work jurisdiction or trade agreements have been found to be determinative in some cases (see Pigott II, *supra*). Similarly, although some disputes have been determined in favour of a trade union which area practice did not favour (see, for example, Simcoe Mechanical Contracting Ltd., [1982] OLRB Rep. Sept. 1352; K-Line Maintenance & Construction Limited, [1979] OLRB Rep. Dec. 1185), the factor of area practice has in fact often been determinative (Ilena Construction Company Limited, [1974] OLRB Rep. Nov. 775; Acco Canadian Material Handling, [1992] OLRB Rep. May 537). Indeed, employer and area practice have become the dominant considerations, both in terms of the time and energy devoted to them by the parties, and the weight given them by the Board. The Board has observed that "it is the rare and unusual [jurisdictional dispute] complaint in which the Board does not attach significant and primary weight to area and employer past practice" and that "the real crux of most jurisdictional disputes revolves around these two past practice criteria" (Electrical Power Systems Construction Association, [1992] OLRB Rep. Aug. 915).

17. This bears further examination in the context of this case, particularly in light of the comments in Nicholls-Radke Ltd., [1996], (unreported, Board File No. 4092-95-JD, July 15, 1996), in which the Board levelled the following criticism:

In receiving past practice materials from the parties, the Board considers practice of the employer involved across the province of Ontario, and the general practice in the area (generally the particular Board area), within the sector of the construction industry in which the work in dispute falls. The Board has consistently given little or (usually) no weight to practice in a different sector or to practice of employers other than the employer which assigned the work in dispute outside of the area. It is a mystery why parties persist in filing such materials. If there is no employer or area practice then there is no employer or area practice, and referring to the practice of other employers in other areas does not create an employer or area practice. Similarly, the Board will give less weight to the practice of single trade employers (i.e. employers which have a collective agreement with only one of the competing trade unions) than it will to the practice of multi-trade employers.

18. The parties would be wise to heed these comments. The Board has developed its approach to construction industry jurisdictional disputes having regard to the nature and organization of the construction industry (on both the employer and the trade union side), which is predominantly on a local geographic basis, and which tends to mirror the geographic jurisdictions of construction local trade unions. Of course, the Board does not blindly adhere to single (local) area practice. In an appropriate case, the Board will look to an "industry practice" which is specific to the particular work in dispute but in a broader geographic area (Foster Wheeler Limited, [1989] OLRB Rep. Feb. 128; application for judicial review dismissed by the Divisional Court [1990] OLRB Rep. May 630); or to accommodate jurisdictions of competing trade union which extend beyond the established Board areas or which are not congruent (Commonwealth Construction Company, [1991] OLRB Rep. June 742). Cases such as these should not be taken to be anything more than the exceptions of the general rule which they are. They underline the Board's willingness to take special circumstances into account.

19. This is a case in which the respective claims to jurisdiction do make a difference. As is apparent from their respective collective agreements, tending (of many trades, not just carpenters) and general clean-up work is part of the core of the work jurisdiction of construction labourers represented by the Labourers' union. It is not part of the core of the work jurisdiction of the Carpenters' union,

although it is an incidental part of it. Accordingly, the collective agreement factor favours the claim of the Labourers.

20. The members of either trade union can quite capably perform the work in dispute. Skill, training and safety favour neither trade union's claim.

21. Ecodyne asserts that it is more economical and efficient for it to perform the work in dispute using carpenters, who are members of Carpenters Local 446. Obviously, it prefers to do so using carpenters.

22. Employer preference is generally no more than a "tie-breaker" when an assessment of all relevant considerations favours neither competing trade union. Economy and efficiency can be important considerations, but cannot operate to trump collective bargaining rights. On the contrary, collective bargaining rights and collective agreements, which inevitably affect the manner in which employer's operate, must be given some meaning. Accordingly, it is appropriate for economy and efficiency to give way to the collective agreement factor, particularly when a trade union's core jurisdiction is in issue.

23. In terms of employer practice, Ecodyne has only erected one other cooling tower in the District of Algoma, the local geographic area with which we are concerned in this complaint. That was in or about 1972. There are no particulars of that job available, but there is also nothing before the Board which suggests that there was anything significantly different about that cooling tower or the manner in which it was erected. On that job, construction labourers were assigned to tend the carpenters who were erecting the cooling tower. Indeed, that job is the genesis of the bargaining rights and collective agreement upon which the Labourers' rely in this case. Ecodyne's employer practice in the rest of the province is quite different in the sense that it appears that it has used members of the Carpenters' union to tend carpenters; that is, carpenters have tended themselves. Employer practice can be of important consideration, except where it is at odds with the established area practice.

24. As the Board observed in *Nicholls-Radke Ltd.*, supra, if there is no area practice, there is no area practice. In this case, the materials do not suggest a lot of area practice, but what there is supports the Labourers' claim. (We find it appropriate to give no weight to the work performed by Marley Cooling Tower because although the Carpenters have bargaining rights with that employer, the Labourers do not.) This includes the Labourers' late filed materials, which we think can be given some weight in the circumstances. Further, Ecodyne's only previous cooling tower job in the District of Algoma was performed in a manner which is consistent with what appears to be the practice in that area, and which is inconsistent with the company's practice in other parts of the province. In these circumstances, we consider it appropriate to give less weight to Ecodyne's practice outside of the District of Algoma. Consequently, past practice favours the jurisdictional claim of the Labourers.

25. Finally, there is no real dispute concerning the clean-up work. It is true that the nature of the materials and the erection process means that less clean-up work is necessary than is the case on many construction jobs. Nevertheless, it is also apparent that there is some clean-up work which must be done. Carpenters are entitled to do their own "trade clean-up", and construction labourers are entitled to do all other clean-up work associated with the job, in accordance with the delineation in that respect made in *Ellis-Don*, [1994] OLRB Rep. Sept. 1222.

26. In the result, the Board is satisfied that the work in dispute should have been assigned to members of the Labourers' International Union of North America, Local 1036.

27. The Board therefore declares that the work of tending carpenters and general clean-up work, and any work necessarily incidental thereto, at Ecodyne Limited's cooling tower project at Algoma

Steel in Sault Ste. Marie should have been assigned to construction labourers who are members of the Labourers' International Union of North America, Local 1036. Our impression is that this work has been completed, but if it hasn't been, the Board orders that it be assigned to members of Labourers' International Union of North America, Local 1036. In that respect, it appears to us on the material before the Board that one construction labourer would be sufficient in that respect on this particular job.

28. In the event that it is not, we wish to make it clear that the result of an identical complaint outside of the District of Algoma might well be different.

**DECISION OF BOARD MEMBER F. B. REAUME; March 20, 1997**

1. After more than 20 years, three downturns in the economy, and significant increases in the comparative wage ratios with respect to labourers compared to carpenters, it is not surprising that this applicant has organized this work as it has done.

2. It is the considered assessment of the applicant that the efficiency and economy of the job is best served by using only carpenters to do the work in dispute with regard to the erection of the cooling water tower.

3. In these competitive times, economy and efficiency are paramount in bidding for work whether you are a union contractor or not. In a case such as this where each union has valid claims on the work in dispute, economy and efficiency must be given due consideration in relation to the bargaining rights of its various unions. It would be expected, of course, that when and if it became efficient to effectively utilize one or more labourers, the applicant would do so.

4. In summary, regardless of why or what happened over twenty years ago, Contractors must focus on the conditions presented currently for each and every such project and make a sound reasonable business decision. Ecodyne clearly did this and determined there was no efficient or effective way to use labourers on this project without featherbedding. This is the core of management rights in the assignment of work where there are conflicting claims by two or more parties.

5. As a result I would not have altered the assignment which in my opinion was both reasonable and correct.

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**1257-94-G Labourers' International Union of North America - Local 247, Applicant v. Ellis-Don Limited, Responding Party**

**Construction Industry - Construction Industry Grievance - Damages - Jurisdictional Dispute - Remedies - Board earlier resolving jurisdictional dispute complaint involving Painters' union in favour of Labourers' union - Labourers' seeking damages as result of improper assignment - Board following *Robertson-Yates* and *Sawyers & Associates* decisions - Board declining to award damages on basis that assignment of work to Painters' union was not unreasonable**

**BEFORE:** *Christopher Albertyn*, Vice-Chair, and Board Members *F. B. Reaume* and *G. McMenemy*.

**APPEARANCES:** *L. A. Richmond* and *V. Claro* for the applicant; *David C. Daniels* and *Brian Foote* for the responding party.



**DECISION OF THE BOARD; March 10, 1997**

1. This matter concerns a construction grievance under section 133 of the Labour Relations Act, 1995.

2. The applicant seeks the payment of damages by reason of the respondent's failure to comply with its obligation to the applicant to assign certain work to its members. That assignment arises from the Board's determination of a jurisdictional dispute in the applicant's favour (Ellis Don Construction Ltd., [1995] OLRB Jan. 20). The referral of a work claim dispute to the Board is contemplated in the collective agreement between the parties (the provincial I.C.I. Labourers' agreement) at Article 8.01, which reads:

**ARTICLE 8 - JURISDICTIONAL DISPUTES**

8.01 When a work claim dispute arises between the Local Union and/or Council, which is a party to this Agreement, and any other Union, Person or Organization, which cannot be settled to the satisfaction of all parties concerned, such dispute shall only be processed as a complaint under Section 93 [now Section 99] of the Ontario Labour Relations Act. In the meantime, work will continue as assigned to the Labourers by the Employer unless otherwise directed by the Ontario Labour Relations Board.

**Preliminary Objection**

3. On the first day of hearing of this application the respondent sought, as a preliminary objection, to have the application dismissed, so it argued, because Article 2.06 of the collective agreement precluded any entitlement by the applicant to damages.

4. A majority of the Board (Board Member Reaume dissenting) made an oral ruling in favour of the applicant at the time.

5. The respondent relied upon Article 2.06 of the agreement. That article reads as follows:

2.06 (a) Schedule "E" to this Collective Agreement constitutes a list of work that is claimed by the Union.

(b) Where work within Schedule "E" is claimed by the Union and is within the I.C.I. Sector and there is no work claim dispute within the meaning of Article 8.01 the work will be assigned to employees represented by the Union.

(c) In the event an Employer is found to have violated the provisions of 2.06(b) above the Employer shall re-assign such work to employees represented by the Union and no claim for damages will be made.

6. The respondent claimed that the effect of Article 2.06(c) is to deprive the applicant of any entitlement to claim damages. For the purpose of the argument only, the respondent accepted that it had violated Article 2.05, i.e. it had engaged a subcontractor not bound by the Labourers' agreement; the work fell within Schedule "E"; the work was within the I.C.I. sector; there was a work claim dispute within the meaning of Article 8.01 up to February 1995; the work was never assigned, nor re-assigned, to the applicant or to workers represented by the applicant; and the applicant received no work, nor any damages from the respondent.

7. The applicant argued that the waiver of damages referred to in Article 2.06(c) did not apply because its damages claim was not founded upon Article 2.06(b). The applicant's claim is found in the provisions of Article 2.05. It reads as follows:

2.05 The Employer agrees to engage only subcontractors who are in contractual relations with the Union and/or its affiliated bargaining agents for all work covered by this Agreement, or work forming part of an I.C.I. General Contract except as provided in Schedule "D" hereof.

8. The applicant argued alternatively that, to the extent that Article 2.06 was relevant to its claim (which it disputed), a condition precedent for the application of the limitation upon damages contained in Article 2.06(c) was absent. Without deciding upon the applicability of Article 2.06 as a whole to the applicant's claim for damages, a majority of the Board (Board Member Reaume dissenting) accept this alternative argument. Article 2.06(c) has meaning only to the extent that the provisions of Article 2.06(b) apply. The employer must have been found to have violated Article 2.06(b) for the waiver of damages to apply. Thus, the prior question, is whether the respondent was found to have violated the provisions of Article 2.06(b).

9. For Article 2.06(b) to apply, three pre-conditions must exist. The applicant must have claimed the work referred to in Schedule "E" of the agreement. That condition obtains here. Secondly, the work must fall within the I.C.I. sector. That is common cause between the parties in this case. Thirdly, there must be no work claim dispute within the meaning of Article 8.01. That last condition is absent in this case because there was a work claim dispute at all times material to the applicant's claim, and that work claim dispute fell within the meaning of Article 8.01. A condition precedent for the operation of Article 2.06(b) is that no such work claim dispute existed. Hence Article 2.06(b) has no application to these proceedings, and nor, as a consequence, does Article 2.06(c).

10. The applicant's claim is founded on Article 2.05 of the collective agreement, and not Article 2.06. The applicant grieves a subcontracting violation of the agreement. Hence, in light of this and the above considerations, the applicant's claim for damages was not struck out on the limited basis advanced by the responding party.

### **The a fortiori argument**

11. Notwithstanding the above conclusion concerning the interpretation of Article 2.06 of the agreement, there is still some relevance in Article 2.06 to the applicant's damages claim. It concerns the responding party's a fortiori argument, i.e. "its argument" that because one ascertainable fact exists, therefore another, which is included in it, or analogous to it, and which is less probable, unusual or surprising, must also exist." (Black's Law Dictionary, 6th Edition, p. 61.) As the Article now reads, the applicant is expressly not entitled to damages when an employer is found to have violated Article 2.06(b). What are the circumstances which would constitute a violation of Article 2.06(b)? The circumstances would have to be the following: the work is described in Schedule "E" of the agreement; the applicant claims the particular work; no other union claims the work (so there is no work claim dispute); and, in those circumstances, the employer does not then assign the work to employees represented by the applicant. The respondent's counsel suggests that is a serious violation of the agreement - it is, in a sense, the most serious violation an employer can make under the assignment of work provisions of the agreement. The reason it is the most serious is that the employer is not placed in any dilemma - there is no rival work claim from any other union - yet it still refuses to assign the work to the Labourers, and it thereby violates Article 2.06(b). In that worst scenario Article 2.06(c) provides that the applicant is not entitled to any damages.

12. Following this line of thinking, the responding party's a fortiori argument is that, if in the worst case scenario the applicant is not entitled to any damages, how can it be entitled to any damages in the circumstances of a less serious violation of the work assignment provisions of the agreement? In other words, the applicant has agreed, under Article 2.06(c) not to receive any damages when the employer does not assign Labourers' work to Labourers when requested to do so, even when no other union claims that work, how then, in the more complex circumstances where there is a work claim and

the employer is faced with a dilemma as to which union the work should be assigned, can the applicant receive damages, as is claimed in this case? Put slightly differently, if the applicant has waived any entitlement to damages in the worst case scenario, so much the more should the Board be disinclined to grant it damages in the circumstances of a less serious violation of the job assignment provisions of the agreement.

### The award of damages generally

13. What we draw from this a fortiori argument is that, although there is no express waiver of damages for a violation of Article 2.05, just as there is no express waiver of damages when an assignment of work results in a work claim dispute, the parties nevertheless do not intend damages to be readily or easily awarded in those circumstances.

14. The Board has previously considered the circumstances in which damages should be granted for an employer's failure to make the right work assignment. The standard articulated in Robertson Yates Corporation, [1995] OLRB Rep. Feb. 158 is the following:

28. Damages should be restricted to those circumstances in which the Board concludes that a contractor/employer did not act reasonably, not those circumstances in which an employer reasonably was wrong.

That decision makes reference to, and adopts, the Board's decision in Sayers & Associates, (unreported, Board Files Nos. 0068-91-G, 0122-91-G, 1381-91-G, 1096-93-G, August 29, 1994) which says the following:

12. Conflicting claims to work jurisdiction are a fact of life for employers in the unionized construction industry, particularly for employers like Sayers and Associates, Stark and English and Mould who are bound, together with the competing trade unions, to provincial agreements and who employ their members. Contractors make work assignment decisions in a variety of situations, such as when they are bidding for work; when pre-job mark-up meetings are held for the purpose of informing the trade unions (and considering their responses) about whose members will perform particular packages of work on a project; and, during the execution of jobs when one trade union perceives that "its work" is being done by members of another trade union.

13. When a conflict arises between trade unions about an employer's assignment of particular work, the employer does not have the luxury of unlimited time in which to consider the relative merits of the competing claims before making the assignment. Therefore, when employers in circumstances such as were present here make their best decision, but on challenge under section 93 of the Act are found to have made the "wrong" assignment, the appropriate remedy is a direction to "correct" the assignment; in other words, direct the employer to assign the work to the members of the trade union which the Board found to have the better claim to the work.

14. That has been the Board's usual remedy in section 93 applications whenever it has concluded that an employer has assigned work to members of one trade union, trade or craft when it should have assigned it to members of another trade union, trade or craft. When that happens to an employer in circumstances like those present with these applications, where the employer considered the relevant factors and made a reasonable assignment (albeit one found by this Board to be incorrect), the employer should not then be subject to damages for lost wages because its incorrect assignment has put it in apparent breach of hiring hall, sub-contracting, or other work protection provisions of a collective agreement to which the employer is bound. That would result in the employer having to pay twice for the same work because of a contest between two trade unions over which one's members should do the work, and in a context where the assignment was reasonably made and the work in question was covered by both collective agreements.

15. The Board recognizes fully that paying twice for the same work is the natural consequence befalling the employer who attempts to circumvent its collective agreement obligations by hiring outside the hiring hall provisions or subcontracting contrary to the requirements of the agreement and is found in breach of the collective agreement. Such provisions are there to prevent employers



from avoiding their obligations to pay the wages, benefits and other terms of a collective agreement. Therefore, when an employer knowingly or carelessly breaches those protections and, as a result, members of the union lose wages or opportunities to earn wages, damages in the form of compensation for the losses are appropriate even though the damages represent a second payment for the work done in breach of the collective agreement.

16. Those are materially different circumstances than where an employer has rationally considered the relative merits of competing claims for the disputed work, decided that it should be assigned to the members of one disputing union instead of another one, and then later is found by a tribunal, like the Board, which adjudicates such disputes to have made the wrong assignment. In the latter circumstances, it would not be in the long term labour relations and economic interests of construction industry employers, trade unions and their members to require employers to pay twice for work performed during incorrect assignments.

17. The Board is not overlooking the fact that members of the trade union to whom the work should have been assigned, and who were available to do the work, have lost an opportunity to earn wages as a result of the incorrect assignment. It well may seem something of a hollow victory for the "winning" union and its members to be told that the work should have been assigned to them, and then not be redressed for lost wages. However, the successful union and its members do benefit from the precedent setting nature of the award respecting future assignments by that employer of the same kind of work in the same Board area. It also has precedential value respecting other employers when assigning the same work in circumstances which are materially similar.

18. One of the major problems for construction industry unions during the decade or more prior to the recent amendments to section 93 of the Act and the Board's Rules of Procedure applicable to work assignment disputes has been the substantial length of time it has usually taken to hear and decide an application. It was rare, if ever, that an application was decided before the disputed work was completed. Therefore, when a union succeeded in having a work assignment changed in favour of its members, they did not get to do the work on the project where the dispute had arisen. This situation has been improved substantially because of the expedited procedures currently available under the Act and the Board's Rules of Procedure applicable to work assignment complaints. The Board is responding quickly in resolving work jurisdiction disputes brought under that section. This means that parties to timely applications can expect normally to get a resolution to a dispute while the work is still being performed. Therefore, if the Board alters an assignment, there will be work for the beneficiaries of the assignment to perform. Therefore, when the Board decides to correct an employer's assignment, a Board direction that the employer forthwith make the correct assignment is the appropriate way to remedy the "incorrect" assignment. Conversely, it would be an inappropriate remedy and not in the best interests of labour relations in the construction industry to award damages under a grievance which alleges that the employer's "incorrect" assignment had resulted in breaches of the collective agreement of the "winning" trade union.

19. That is not to say, however, that there could be no circumstances in which damages in the form of compensation for lost wages and/or relief in the form of cease and desist and other declarations would be appropriate remedies where an employer makes an incorrect assignment. Such remedies might well be appropriate where an employer acts arbitrarily in making an assignment, or disregards established area practice, and/or ignores or fails to properly consider other commonly accepted criteria for making work assignments, and is found to have breached a collective agreement because of the incorrect assignment.

The view expressed in these decisions is that unless the assignment is unreasonable in some fashion (for example, because it is made in clear violation of a Board ruling, or made *mala fide*, or contrary to the established practice in an industry or where there was no opportunity or procedure for the union to make a claim for the work), there will be no damages.

15. The union's counsel argued that we should not follow the Board's decisions in *Robertson Yates Corporation*, [1995] OLRB Feb. 158 and *Sayers & Associates*, *supra*. Counsel argued that the Board cannot set general rules and guidelines for determining whether or not damages are payable because the Board's authority is determined by reference to the collective agreement. The Board sits as a board of arbitration and its authority and jurisdictions bound by the collective agreement rather than

by general equitable principles as, in counsel's submission, were articulated in *Robertson-Yates*, and *Sayers & Associates*. No equitable discretion has been provided in the provincial agreement and, counsel urged, we should not alter the agreement by inferring any such discretion.

16. Furthermore, union counsel submitted that, while the intention of *Robertson Yates* was to discourage litigation for damages, the decision had the opposite effect because it invited consideration, and hence litigation, as to the process which led up to the decision to assign particularly work, whereas, on counsel's argument, damages should necessarily flow from the contractual breach, as contemplated in the collective agreement.

17. Counsel argued that the proper remedy in this case is a "make whole" remedy and the damages for loss of earnings should flow for the duration of the plaster removal work by J. P. Matte.

18. Other than the strong indication we have drawn from the provisions of Article 2.06(c) that damages should not readily be granted in the circumstances of a work assignment dispute, as explained above, there is no express provision in the provincial agreement either prescribing that damages will be automatically payable in the event of an erroneous work assignment, or declaring that no damages will be payable in that event. The entitlement to damages by the applicant is therefore a matter of discretion to be exercised by the Board in the manner it considers will best achieve the parties' intention as expressed in the collective agreement.

19. We are satisfied that the Board's discretion should be exercised in the manner articulated in the *Robertson-Yates Corporation* and *Sayers & Associates* decisions. The assignment of work requires quick, practical decisions. Given that context, some of the decisions will inevitably be mistaken or erroneous. That likelihood is intrinsic to the hasty context in which such decisions are usually taken. In such circumstances, the limited scope of any damages claim, as expressed in *Robertson-Yates Corporation* and *Sayers & Associates*, seems to us to be the proper approach.

20. We now consider the circumstances of the assignment to determine whether the mistaken assignment of the work to the Painters, instead of the Labourers, amounted to an unreasonable assignment.

### **Evidence**

21. The respondent was the general contractor performing on-going renovation work at the Kingston penitentiary. It subcontracted certain plastering and painting work to a painting contractor, J. P. Matte, who was bound by the Painters' Provincial Collective Agreement. The work was done in stages, one cell block at a time. The penitentiary inmates were moved from the block undergoing renovation and double bunked in another block until that block was complete and the renovation worked moved to the next block. Construction on cell block B2 commenced in February 1994. The lead paint removal by J. P. Matte started in mid-March 94. Until then J. P. Matte had been performing all of the paint removal and painting work on the project - chemically removing old paint, scraping it off and cleaning the surfaces for the application of new paint. The original contract between the respondent and J. P. Matte did not contemplate the removal of plaster in the cells, it provided for the stripping of a lead-based paint. A chemical compound was to be used to strip the paint. That method had been approved by the Ministry of Labour and the respondent's joint workplace health and safety committee.

22. J. P. Matte's contract with the respondent involved the removal of lead paint from the external and internal cell walls, railings, the structural steel, the grill barriers, the walkways, the windows, the masonry stone and other parties of the cell block. There was plaster only on the internal cell walls and, in the process of removing paint from some internal walls in cell block B2, it became

apparent that some crumbling plaster had to be removed from sections of those walls. Where the plaster had been saturated or contaminated by lead paint it lacked sufficient coherence to be painted over, and it had to be removed. Initially a chemical removal of the paint was attempted. When that was unsuccessful, patching of the plaster was attempted, but where the plaster was too weak and disintegrating, it was apparent that the plaster itself had to be scraped off. J. P. Matte sent a letter to the respondent advising of the problem on June 13, 1994. When the lead-contaminated, crumbling plaster became apparent the architect called a halt to the work in cell block B2 and then issued a change order on June 24, 1994. By that stage the renovation job was 3-4 months behind schedule and it had become extremely time-sensitive. The company was under great pressure from Corrections Canada to proceed and complete the renovation.

23. There were two alternative methods proposed as a result of the change order to deal with the crumbling plaster in cell block B2. J. R. Noel, a subcontractor in contractual relations with the applicant, tendered on the basis of leaving the plaster in place and using a lath and plaster above it. J. P. Matte tendered on the basis of removing the deteriorated plaster and applying a thin set of plaster. The prior thickness of the plaster was between 1/8" and 3/8". The plaster proposed, and ultimately applied, by J. P. Matte was less than 1/8" thick. J. P. Noel was the company's plasterer on the property; J. P. Matte its painter. The choice between them was really a choice of process. The architect preferred the J. P. Matte quotation and their proposed solution to that of J. R. Noel, and on that basis the respondent appointed J. P. Matte to remove the plaster and apply a thin strip of plaster and paint.

24. J. P. Matte's quotation was accepted because it was the primary contractor for the lead paint removal on the project as a whole and it was familiar with the work and the conditions and, given the time-sensitivity of the project with prisoners double-bunked for the duration, it made sense to the company to use a subcontractor which was actually on site. J. P. Matte was unwilling to give a warranty unless it performed the whole job, but it was able to give the company a complete warranty if it performed the whole job: plaster removal, plaster re-application and painting. A further consideration which influenced the company's decision to give the work to J. P. Matte was the fact that the plaster removal constituted the smallest portion of the work as compared to the re-application of plaster and the painting.

25. Before awarding the amended work order to J. P. Matte, the respondent inquired of J. P. Matte whether it had concluded the necessary contracts with the local unions and the respondent was assured by J. P. Matte that it had made inquiries of the local trades and the Labourers and it had their agreement that the painters should perform the work.

26. J. P. Matte's work on its amended contract commenced on June 24, 1994, although it did not receive a formal contract in respect thereof until well in August 1994. By that time it is likely that the company had already received a grievance from the applicant as regards the work assignment. On August 2, 1994 a 'stop work' order was issued by the Ministry of Labour on account of lead contamination in the air at the site. A protocol was concluded for removal of the contaminant by a speciality contractor, which did so. Upon the removal of the contaminant, the Minister of Labour lifted its stop work order on October 16, 1994, when work by J. P. Matte recommenced. Its job (that claimed by, and assigned by the Board to, the applicant) was completed at about the time of the issue of the Board's decision on the jurisdictional dispute on January 26, 1995.

27. The applicant's members worked on the penitentiary site from 1990 onwards. They had done the plaster removal on sections of the penitentiary until the assignment to J. P. Matte of that work in cell block B2.

28. The applicant's business manager, Mr. Claro, received information in June 1994 that painters working in cell block B2 were using small jackhammers to remove paint. He contacted the site



supervisor and asked him why painters were performing that work. The respondent's site supervisor responded that the painters were only stripping the paint off. Mr. Claro explained that Labourers had been doing plaster removal for 4 years on the site and he requested that the work be assigned to a contractor which had an agreement with the applicant in accordance with past practice. The site supervisor reiterated that the painters were only stripping paint and he refused to make the reassignment. The respondent claims that, at the time Mr. Claro contacted the site supervisor, J. P. Matte was still trying to patch the plaster and the removal of the plaster had not yet commenced. We are not persuaded by that: Mr. Claro's version is more probable because he is unlikely to have complained of plaster removal before its occurrence. Mr. Claro filed a work claim grievance on June 29, 1994, 5 days after J. P. Matte started its plaster removal.

29. There is some doubt as to the nature of the tools actually used by the painters on the inner walls of the cells in block B2 to remove the paint and the loose plaster. The evidence suggests that the painters were using electrically powered chipping guns or chipping hammers or small hammer drills, rather than jackhammers, for the plaster removal. Chipping hammers are used by painters in the ordinary course of their work. During the period of J. P. Matte's work removing plaster the applicant had several of its members out of work who were available to perform that work.

30. The applicant's view at the time, that all previous plaster removal on site had been done by its members, is not entirely accurate. J. P. Matte had removed plaster in block B. J. P. Matte had removed plaster in B7 from the masonry wall with a thin coat of plaster, which was much like the circumstances in cell block B2. There too the construction was a masonry wall with a thin layer of plaster and no lathing.

31. Mr. Claro filed the applicant's work claim grievance on June 29, 1994. That claim was referred to the Board as a jurisdictional dispute in Ellis Don Construction Ltd., referred to above, out of which this application arises.

32. We are not at all satisfied that the plate removal work was unreasonably assigned to the painters and to J. P. Matte. The plaster removal was ancillary and a relatively minor portion of the actual plastering and painting job performed by J. P. Matte. J. P. Matte had the painting and re-plastering contract. It would not guarantee its work if the plaster removal were performed by another contractor. It wanted to prepare the surface in a manner which enabled it to guarantee its work. The method of dealing with the problem of the crumbling walls proposed by J. P. Matte was superior to that proposed by the Labourers' contractor, which, had it been applied, would not in the architect's opinion have achieved the consistency that was required.

33. We ruled in a decision on December 6, 1995, that any damages due to the applicant were not restricted to the period after the Board's determination of the work claim dispute (January 26, 1995), but could apply retrospectively to the date when the mistaken assignment was made.

#### **The application of the Robertson-Yates test**

34. We now consider whether, on the evidence and the test referred to above, the applicant is entitled to any damages.

35. When the respondent assigned the plaster removal to J. P. Matte, following the architect's change order, the following considerations applied. J. P. Matte had been doing the work not only in cell block B2, but in other sections of the penitentiary, including plaster removal. Its employees were familiar with the site, the work to date and with what was expected from them. There was some urgency to complete the work. The plaster removal was ancillary and a subordinate part of the overall work of paint removal and repainting. J. P. Matte's employees were familiar with the use of chipping guns and

hand drills. The use of another contractor only to remove the plaster would have involved lots of downtime for both J. P. Matte and the other contractor: J. P. Matte would remove the paint; if the plaster appeared stable and secure it would proceed to paint; if the plaster appeared unstable, it would step aside and let the other contractor do the plaster removal and it would then apply fresh plaster and paint while the other contractor's employees waited around for the next opportunity to remove plaster. Much of the plaster was very thin and it was stripped with the paint, as would conventionally be done by painters. The respondent was concerned to obtain a guarantee for the work done and J. P. Matte would warrant the quality of its work only if it performed the whole job. Perhaps most important, the respondent had received an assurance from J. P. Matte that the trades and the applicant had approved of it doing the work. The respondent understood from that assurance that it would not be in violation of its contractual obligations to the applicant by assigning the work to J. P. Matte.

36. Applying the test in Robertson Yates Corporation, referred to above, we are satisfied that the respondent's assignment of the work to J. P. Matte was not unreasonable in the circumstances.

37. The application is accordingly dismissed.

#### **DECISION OF BOARD MEMBER, F. B. REAUME; March 10, 1997**

1. While I agree that the assignment of work to J.P. Matte by Ellis-Don was not unreasonable under the circumstances, I would also find that Article 8.01 provides only for the filing of a jurisdictional dispute under section 93 of the Act, when two or more parties dispute a work claim and precludes any claim for damages (grievance) at least until the determination of the work assignment.

2. The logic of the above finding is borne out further by the a fortiori argument outlined in paragraphs 11-13 of the decision. It is difficult to suggest that a violation of work assignment where there is no work claim dispute would preclude a claim for damages while an assignment where there is a work claim dispute with any other party would allow a retrospective claim for damages prior to the settlement of the jurisdictional dispute.

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**2763-96-U** Group of Employees Represented by Rene Dubeau, Leo Kelly, Eugene Weber and Bruce Cook, Applicants v. National Automobile, Aerospace and Agricultural Implement Workers of Canada (CAW - Canada) and Local No. 222 CAW Responding Party v. **General Motors of Canada Limited**, Intervenor #1, Peregrine Oshawa Inc. and Peregrine Windsor Inc., Intervenor #2

**Duty of Fair Representation - Ratification and Strike Votes - Unfair Labour Practice - Group of employees alleging that union misled employees about terms of contract settlement - Employees asserting that Labour Relations Act obliging union in conducting ratification votes to tell its members in advance of the meeting and in written form contents of proposed settlement - Board dismissing application for failure to make out *prima facie* case**

**BEFORE:** *Janice Johnston*, Vice-Chair.

**APPEARANCES:** *C. J. Abbass, R. Dubeau, Eugen Weber, Leo Kelly and Bruce Cook* for the applicants; *L. N. Gottheil, Tony Leah, Bert Rovers, John Graham and Don Whalen* for the respondent party; *David Bannon, Jim Cameron and Elisabeth Campin* for the intervenor #1; *R. N. Nero* for the intervenor #2.

**DECISION OF THE BOARD; March 17, 1997**

1. This is an application pursuant to section 96 of the Labour Relations Act, 1995, (the "Act") alleging a violation of sections 44, 74 and 79(7)-(9). The application was filed on behalf of 657 individuals.

2. The relevant sections of the Act read as follows:

**44.** (1) A proposed collective agreement that is entered into or memorandum of settlement that is concluded on or after the day on which this section comes into force has no effect until it is ratified as described in subsection (3).

(2) Subsection (1) does not apply with respect to a collective agreement,

- (a) imposed by order of the Board or settled by arbitration;
- (b) that reflects an offer accepted by a vote held under section 41 or subsection 42(1); or
- (c) that applies to employees in the construction industry.

(3) A proposed collective agreement or memorandum of settlement is ratified if a vote is taken in accordance with subsections 79(7) to (9) and more than 50 per cent of those voting vote in favour of ratifying the agreement or memorandum.

**74.** A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

**79.** (7) A strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement taken by a trade union shall be by ballots cast in such a manner that persons expressing their choice cannot be identified with the choice expressed.

(8) All employees in a bargaining unit, whether or not the employees are members of the trade union or of any constituent union of a council of trade unions, shall be entitled to participate in a strike vote or a vote to ratify a proposed collective agreement or memorandum of settlement.

(9) Any vote mentioned in subsection (7) shall be conducted in such a manner that those entitled to vote have ample opportunity to cast their ballots. If the vote taken is otherwise than by mail, the time and place for voting must be reasonably convenient.

**96.** (4) Where a labour relations officer is unable to effect a settlement of the matter complained of or where the Board in its discretion considers it advisable to dispense with an inquiry by a labour relations officer, the Board may inquire into the complaint of a contravention of this Act and where the Board is satisfied that an employer, employers' organization, trade union, council of trade unions, person or employee has acted contrary to this Act it shall determine what, if anything, the employer, employers' organization, trade union, council of trade unions, person or employee shall do or refrain from doing with respect thereto and such determination, without limiting the generality of the foregoing may include, despite the provisions of any collective agreement, any one or more of,

- (a) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to cease doing the act or acts complained of;
- (b) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to rectify the act or acts complained of; or
- (c) an order to reinstate in employment or hire the person or employee concerned.



with or without compensation, or to compensate instead of hiring or reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer, employers' organization, trade union, council of trade unions, employee or other person jointly or severally.

3. At the hearing scheduled to deal with this matter, counsel for the responding party, the National Automobile, Aerospace and Agricultural Implement Workers of Canada (CAW - Canada) and Local No. 222 CAW (the "union" or the "CAW") brought a motion to dismiss this application on the basis that the application does not make a prima facie case for the remedies requested. Counsel for Intervenor #1, General Motors of Canada Ltd. ("G.M.") adopted the submissions of counsel for the union with regard to the motion to dismiss for failure to make out a prima facie case and joined in the motion. In addition, counsel for G.M. requested that the Board exercise its discretion pursuant to section 96(4) and decline to inquire into this complaint, as in his view, there was no labour relations purpose to be served by continuing with the hearing and delving into the allegations which have been made. Counsel for Intervenor #2, supported the motions which had been brought to dismiss this application on both grounds.

4. For the purposes of dealing with the preliminary motions, I have assumed that the facts claimed by the applicant both orally and in writing are true and provable. This application, as outlined in the pleadings and as clarified at the hearing deals with the following situation.

5. Prior to the commencement of the recent set of negotiations between GM and the CAW for the renewal of the Master Agreement and the Local Seniority Agreement, GM announced its intention to sell the Windsor Trim and the Oshawa Fabrication plants (the "Fab" plant). In the spring of 1996 there was talk amongst the Oshawa workers of the sale of the Fabrication plant and the possible loss of seniority rights by the Fab plant workers. In answer to this talk the Shop Committee put out a message on May 8, 1996, indicating that there would be no loss of seniority and confirming that in the event of a sale, the Fab Plant workers would continue to have their plant wide seniority rights as set out in the Local Seniority Agreement. This message reads as follows.

This leaflet is being circulated to answer the countless rumours and totally untrue versions of what your rights are in a worst-case scenario of the Fab Plant being sold.

**Contrary to what you may have heard, there are no petitions circulating in the South Plant to take away your rights.**

As your elected representatives now, and in the upcoming 1996 negotiations, we will not be part of any bargaining that takes away the seniority rights of the Fabrication Plant members-or for that matter, any seniority member in Oshawa.

If the Company was allowed to separate any plant, all the membership in Oshawa would be affected and suffer by any type of permanent reduction. **Seniority is the foundation of our Union.**

Your rights under Document 12 of the Master Agreement clearly identify Oshawa as a multi-plant site. Under a closure or restructuring event Document 12 refers to the reduction in force provisions. Paragraph 58 of the Master Agreement identifies seniority rights and where they are exercisable, referring to the Local seniority rules.

The Local seniority rules identify your flow in paragraphs 7 through 16 of the Local Seniority Agreement. There is no question in the interpretation of your rights: you very clearly have the right to flow.

First and foremost, our Number One objective will be to overturn and reverse any decision surrounding the intended sale of the Fabrication Plant. You the Fabrication Plant members-have our full support on this very important issue.

**In Solidarity, Your Shop Committee**

6. The collective agreement between G.M. and the union expired on September 14, 1996. The union went on strike on October 2, 1996. On October 22, 1996 the media reported that a tentative deal had been reached and that a ratification meeting would take place on October 23, 1996. No information as to the nature or content of the proposed collective agreement nor any written notice of the date, time or place of the ratification meeting were given or made available to the GM individual bargaining unit members prior to the ratification meeting on October 23rd, 1996, other than as reported by the media. It was not suggested that the applicants in this case did not have actual notice of the meeting nor was it suggested that they did not attend the meeting. It was not disputed that the turn out for the meeting was above average.

7. It is not necessary to set out in detail the terms of the changes to the collective agreement which were to be ratified. Suffice it to say that despite the best efforts of the union, the sale of the Oshawa Fab plant was not prevented. Accordingly, the employees of the Fab plant were terminated by G.M. and became employees of the purchaser. However, this termination was softened by a multi-page agreement between the union and G.M. which among other things, gave the Fab plant employees the right over the terms of this collective agreement and the next collective agreement (normally three year agreements) to become re-employed by G.M. without loss of seniority. In addition, there was a buy-out option and the continuation of most benefits.

8. At the ratification meeting on October 23, 1996, a brochure outlining the highlights of the agreement was distributed. The first five pages of this brochure are attached to this decision as appendix "A". The two critical portions of this brochure are found in page 4 & 5 and read:

The union has achieved a major breakthrough on outsourcing. In past agreements we have developed programs that limit layoffs and provide income security for our members. In this round of bargaining we have gone further. We have successfully curtailed the company's right to outsource our jobs.

Going into bargaining the union promoted the concept of work ownership - protecting the work which we have historically done.

At GM, we had the additional problem that the company had already announced - prior to the opening of negotiations - the proposed sale of the Windsor Trim and Oshawa Fab plants. **The sale of these two plants was not reversed, but as we explain elsewhere, we were able to get unique and very important protections for the affected workers.**

\* \* \*

#### **Sale of Oshawa Fab**

Every worker will have a chance to return to GM Oshawa plants.

1,875 Document 12 buy-outs city-wide (unused are banked).

GM back-up payer if new owner can't meet benefit, pension, insurance, or income security commitments (through to 2005).

Pensions: Service at GM, plus the first nine years of service at the new company, at the same rate as someone retiring at GM in same circumstances.

Full GM benefits at retirement.

1,280 Document 12 buy-outs (unused are banked).

It is acknowledged that the applicants received this brochure at the meeting. It was not disputed that at the ratification meeting every member had the opportunity to ask questions and seek clarification regarding the proposed settlement.

9. Prior to the vote being conducted, various individuals, including Mr. Buzz Hargrove spoke at the meeting. Mr. Hargrove told the assembled workers that over the next six years every Fab plant employee would have the right to return to the G.M. Oshawa plants or accept a buy-out. This was an accurate description of what had been agreed to.

10. Counsel for the applicants argued that by not specifically telling the employees of the Fab plant that their employment with G.M. had been terminated, the union misrepresented the settlement that had been agreed to between G.M. and the union. Counsel took the position that because they were not told that their employment with G.M. had been terminated by the sale of the Fab plant, the applicants assumed that they would remain employees of G.M. Given that the employees had been told by the union (in the May shop committee message) that it intended to reverse the sale and would protect the seniority rights of the Fab plant employees, unless told to the contrary the Fab plant workers were entitled to assume that this was still the case. Had they known that their employment had been terminated, subject to various terms and conditions, the applicants would not have voted in favour of ratifying the proposed collective agreement.

11. The applicants' counsel took the position that the union intentionally misled the Fab plant employees as to the nature of the settlement reached with G.M. to ensure that the new collective agreement was ratified. In his view, the Fab plant employees should have been told that according to the settlement, their employment with G.M. was terminated. By not telling the Fab plant employees that their employment was terminated, the employees at the ratification meeting did not have sufficient information upon which to cast an informed ballot. In counsel's view, the union cannot keep the contents of the amended collective agreement secret and still comply with section 79. Counsel suggested that section 44 of the Act requires that a proposed collective agreement be ratified pursuant to section 79 of the Act before it will have any effect. If section 79 is not complied with, the collective agreement has no force and effect. In this case, as the employees did not have sufficient information for an informed vote, and the information they were given was not accurate, the vote is nullified. In addition, because the union officials were dishonest and acted in bad faith, they violated section 74 of the Act.

12. Counsel for the applicant argued that by using the local media to inform the employees of the ratification meeting, the union failed to give appropriate notice pursuant to section 79 of the Act. In his view, the length of the notice, the content of the notice and the means of publishing the notice were insufficient to meet the requirements of the Act. In addition, he suggested that pursuant to section 79 of the Act, the union is required to provide, in advance of the meeting, the memorandum of settlement which it seeks to have ratified. In the alternative, the union must provide the individuals who attend the meeting with sufficient information and time so as to enable those who are opposed to the recommended settlement an opportunity to mount a campaign against the settlement before the vote.

13. Counsel for the applicants took the position that had the applicants been told that the sale had gone through and that their employment had been terminated, they would not have had a case before the Board.

14. By way of remedy, the applicants requested:

1. That the Board find that Respondents have breached section 74 of the Act.
2. That the Board find that the ratification vote held on October 23rd, 1996, to ratify the proposed collective agreement between the Respondents and GM was not conducted in accordance with section 79 (7) to (9) of the Act.



3. That the Board find that the proposed collective agreement between the Respondents and GM has not been ratified as required by section 44 of the Act and is of no effect.
4. That the Board order the Respondents to conduct a ratification vote of the proposed collective agreement in accordance with section 79 (7) to (9) of the Act.
5. That the Board order the Respondents to compensate the Applicants for the losses sustained as a result of the Respondents breach of its duty under section 74 of the Act.
6. Such other relief as the Board considers appropriate.

15. It is not necessary to set out the submissions made by counsel for G.M. and counsel for the union. Both counsel provided me with extensive and helpful submissions and directed me to relevant jurisprudence. I have taken these submissions and the jurisprudence into account in deciding the two motions.

### Decision

16. For the reasons that follow, I am of the view that as this application fails to make out a prima facie case for the remedies requested, it is appropriate to exercise my discretion pursuant to section 96(4) of the Act to decline to inquire further into this complaint. The Board's Rules of Procedure provide in Rule 24:

#### Dismissal without a hearing

24. Where the Board considers that an application does not make out a case for the orders or remedies requested, even if all the facts stated in the application are assumed to be true, the Board may dismiss the application without a hearing. In its decision, the Board will set out its reasons. The applicant may within twelve (12) days after being sent that decision request that the Board review its decision.

17. In *The Coalition of Laid-off Workers*, [1990] OLRB Rep. Oct. 1019 the Board in dealing with an allegation that the union had deliberately misled and misinformed the membership stated:

17. There is no doubt that the complainants have alleged certain matters which, if proven, might arguably constitute breaches of section 68 of the Act. For example, when the complainants allege that the respondent union "deliberately mislead [sic] and misinformed each member that did sign any authorization forms provided by the respondent union reps" (see paragraph 8, *supra*) they make an allegation which might arguably constitute a breach of section 68, provided material facts in support of that allegation are proven. What material facts have been alleged we accept as true. But there are not sufficient material facts to support this allegation. The complainants were directed to indicate, for example, the names of any individuals who are alleged to have made misrepresentations, the statements that were made, and the circumstances under which they were made. They failed to file those particulars. What we are left with a mere assertion that the complainants were misled or misinformed. These are not material facts on which we can conclude that an arguable breach of section 68 has been pleaded. And insofar as Mr. Ellison and Mr. Hinds are concerned, since they negotiated their own settlements, there are not even assertions of how the union might not have represented them fairly.

In other words, as in the case before me, it is not sufficient to simply allege misrepresentation, dishonesty and bad faith on the part of the union, the applicant must also provide sufficient material facts to support such an allegation. Therefore, the test applied in determining whether or not a particular case discloses a prima facie case has been described by the Board as "where there is no reasonable likelihood that a complaint can succeed on the facts as alleged" (see *The Coalition of Laid-off Workers*, *supra* at par 20 and the cases cited therein) or "where the allegations are insufficient to render reasonable or arguable a conclusion that the Act has been breached" (see *Caravelle Foods*, [1983] OLRB Rep. June 875 at page 881), the applicant has failed to make out a prima facie case for the remedies requested.

18. In this case, there is no dispute that the union members who attended the ratification meeting were provided with a written summary of the tentative agreement, that certain union officials, including Buzz Hargrove, spoke and elaborated on the deal and what these officials said. There is no dispute regarding what was said, the dispute is about what was not said. What this case comes down to, after a day and a half of submissions, is that based on what they had been told in May, five months earlier, and based on what they read and were told at the ratification meeting, certain individuals came to certain erroneous conclusions.

19. Based on what they were told, the applicant's concluded that their employment with G.M. would not be terminated. It is clear that no one specifically told them this, it was simply a conclusion that they came to. Counsel for the applicants asserts that the individuals affected by the sale of the Fab plant should have been told that their employment was terminated. That the union should have used these specific words. Hindsight is a wonderful thing. In retrospect I am sure the union wishes it had used those specific words. However, they did not. At the end of the day, there is not a single material fact to support the applicant's allegation that the union acted in bad faith, was dishonest, or intentionally misled the Fab plant employees. Clearly they did not choose the words to describe the effect of the sale that the applicants would have had them use. But they did accurately describe the agreement that had been reached. The union cannot be faulted or held responsible for the fact that some individuals made assumptions and based on these assumptions came to an erroneous conclusion. To succeed in a claim that section 74 of the Act has been violated, the applicants must prove that the union failed in its duty to fairly represent them and acted in a manner that was arbitrary, discriminatory or in bad faith. After having considered this case as described both orally and in writing, there are no material facts to support a violation of section 74 of the Act.

20. Section 44 of the Act requires that, before it will be given any effect, a proposed collective agreement must be ratified by a vote taken in accordance with section 79 of the Act. Section 79 of the Act deals with both strike votes and ratification votes. Section 79 requires that both types of votes be conducted: by secret ballot; that all employees, whether or not members of the trade union shall be entitled to participate in the vote; that the vote shall be conducted in such a manner that those entitled to vote have ample opportunity to cast their ballots; and that if the vote taken is otherwise than by mail, the time and place for voting must be reasonably convenient.

21. Although it was initially claimed otherwise, it became apparent at the hearing and was conceded by counsel for the applicant that there was no issue with regard to the notice that the ratification meeting would take place and where it would take place. In other words, the union members knew about the meeting and when and where it would take place. The issue raised by counsel for the applicants, is whether there is an obligation on the union in conducting ratification votes to tell its members in advance of the meeting and in written form, the contents of the proposed settlement that the union is seeking to have ratified. The answer to this question must be no. Nowhere in section 79 is this obligation set out and the practical difficulties which such a requirement would impose are enormous. It cannot be, especially in the circumstances of this case where 13,000 employees in Oshawa are on strike, that the legislature intended the union to disseminate this kind of information to its membership with the delays this might entail, as a prerequisite to holding a ratification meeting. It makes no sense to read into section 79 a requirement for the union, in this case where the collective agreement is extremely lengthy and complex, to keep its membership out on strike for what could be several more days, with the consequential economic losses, to enable it to provide written information to its membership regarding the contents of the proposed change to the collective agreement.

22. However, having said that, it is also my view that either inherent in section 79 of the Act, or as a part of its duty to fairly represent its members pursuant to section 74 of the Act, the union must give its membership, at the ratification meeting, accurate information with regard to the proposed

settlement. There is no magical formula that must be met, but the membership must be given sufficient information so as to enable a reasonable person to vote in an informed manner on the proposed changes to the collective agreement. In the case before me I am satisfied that the union met this obligation. They provided a written brochure outlining the changes, in a format that has been used by them for many years. This information was orally supplemented by representatives of the union at the ratification meeting. As I have already noted, the information that was given was accurate. The difficulty in this case is that the applicants appear to have come to unintended conclusions. However, as I have already concluded, the union cannot be faulted for this. There are no material facts to support the conclusion that there was a misrepresentation of the proposed deal or that the union was dishonest. There has been no violation of section 79 of the Act.

23. Accordingly, for all of the reasons outlined, it is not appropriate to inquire further into this matter and I decline to do so. This application is dismissed.

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## HOURLY

## CAW/GM CANADA REPORT

## Highlights of the agreement between the CAW-Canada and GM Canada

*Message to General Motors workers from Buzz Hargrove*

## Fighting Back Does Matter!

In all my years in the trade union movement, nothing has made me more proud than how our members conducted themselves during this strike against the largest manufacturing company in the world.

Working people are living through an age of permanent insecurity and dangerous loss of hope. We're constantly preached to about "the new reality" and repeatedly bombarded with the message that "there's really nothing we can do" about what's been happening to us. This strike was about working people asserting, by their words and by their actions, that things can change and that fighting back matters. The economic elite in both Canada and the United States was especially upset about our strike and I suspect that it had less to do with the short-term economic impact we were having on their pocketbooks than with the long-term social danger they perceived in ordinary people standing up and fighting back.

Reporters repeatedly told me that everyone they talked to on the picket line knew the facts, the issues and the arguments. General Motors workers were sober about what they were taking on, but absolutely determined to take a stand on behalf of themselves, their families, and their communities. Those interviewed expressed, in the most eloquent ways, the frustrations of all working people with the false promise of "work hard and things will get better".

And then there was the occupation of the Oshawa Fab Plant.

On October 15, GM essentially declared war on our union. GM tried to remove the



dies from the Oshawa Fab plant, blatantly undermining both our key issue (keeping our jobs) and our bargaining strength (the dies were critical to our economic pressure on GM). The Oshawa leadership, fully supported by the GM Master Committee, the national union, and with the crucial involvement of the trades, did what it had to do. In an earlier period, when things looked hopeless, workers sat down in auto plants and our union was born. On October 16, they took over Oshawa Fab to protect their work, and the spirit of our union was reconfirmed.

Two days after the successful takeover, all sections of our union, from every corner of the country, came together to pay tribute to the GM strikers. The meeting committed, virtually unanimously, to a doubling of their dues - if necessary - to support their GM brothers and sisters.

When we took on the issue of outsourcing and the principle of "work ownership", we knew we were challenging rights that were generally viewed as belonging only to management. We also knew that even if we won some protections, the companies and their management would still be running the show. But that made us even more determined to make some gains, to insist that working people should have some rights over work they have historically done.

Even when we put the issue on the agenda, almost everybody - including most experienced trade unionists - thought we couldn't possibly win. But with the Chrysler settlement, we showed it was possible. And this set the stage for the more dramatic con-

frontation at GM. We faced that test and won.

The tentative agreement before you contains gains in wages, cost-of-living, income security, benefits, higher buy-outs, reduced worktime, and limits on the corporation's ability to outsource our work.

The positive impact on jobs is evident from the following:

- The increase in SPA will mean about 400 new job openings in the GM chain.
- Our emphasis on limiting outsourcing lead to a negotiated reversal of almost 800 jobs in Oshawa, Ste-Thérèse and London.
- The St. Catharines axle plant - approximately 600 jobs - has again been reprieved and will survive through the life of this agreement.
- Limits on major outsourcing, the need to match future outsourcing of minor jobs with other work, the lid on the sale or closure of operations - all these provide new protections for future jobs.

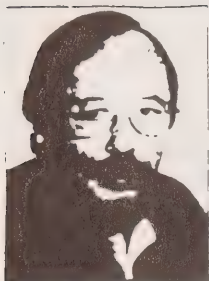
This bargaining round will, I'm convinced, merit a special chapter in the story of working people struggling for things they should have by right and by common sense. It has already played a key role in building the confidence of our leadership and membership, and strengthening our union. We have made history.

I join with the members of the GM Master Bargaining Committee in recommending that you vote in favour of this tentative agreement.

### Highlights

- Outsourcing Protection
- No Sale or Closure Over Life of Agreement
- COLA and Wage Increases
- Benefit Improvements
- 10 Additional SPA Days
- Health and Safety Law Protection
- Employment Standards Law Protection
- No Concessions

## Message from Dave Vyse



The main stumbling block in our strike with General Motors was protection against outsourcing. And the settlement we are recommending to you for approval represents a tremendous victory on this issue: job-for-job replacement of future outsourcing, the reversal of several hundred previously announced job losses, and generous protection (including pension coverage) for workers at the Windsor Tm and Oshawa Fab plants.

But wages, benefits, and time-off were also crucial issues during 1996 bargaining, and I would like to highlight a few of the gains we have made in these areas.

GM fully matched the wage pattern established by the CAW with Chrysler: a 2% annual improvement factor in each year of the contract, on top of COLA. We also improved the COLA formula, so that it will offset some 90% of the rise in consumer prices. Given record low wage increases being granted elsewhere in

the economy, this is an excellent wage package.

Important benefit improvements were also achieved.

Health care benefits include improved out-of-province coverage, better vision and dental care, and a better system for adding new drugs to Green Shield prescription coverage. Optional and dependent group life insurance was expanded. Survivor income benefits will grow significantly over the life of this agreement.

1996 bargaining expanded the SPA concept of scheduled paid time-off, introduced in 1993. Workers will now receive five paid SPA weeks over the three year contract (representing 10 new paid days off). This is equal to one SPA week roughly every seven months. We estimate that GM will create about 400 openings to fill in for workers on the additional SPA weeks; in total, the Big 3 will have created 2,000 new jobs over the life of the 1993 and 1996 agreement thanks to the SPA concept.

Increased time off the job, together with our protection against outsourcing, is an outstanding example of how the CAW is working to protect and expand the number of well-paid jobs in Canada's economy.

Local negotiations proved to be especially

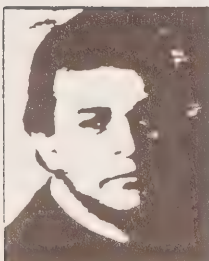
contentious during 1996 bargaining, and I want to thank all the local committee members for their determination and perseverance. The company demanded numerous concessions right up to the eleventh hour, and it was only due to the very strong positions taken by our local committees – not to mention the solidarity of our rank-and-file members on the picket lines – that their concessions were finally taken off the table.

It was a great honour to serve as chair of the CAW-GM Master Bargaining Committee during this historic round of negotiations. Many thanks are due to the hundreds of committee members, and the tens of thousands of GM members, who devoted so many hours to bargaining, picket duty, and other strike support work. Without you, this victory for our union and for all working people would not have been possible.

Along with Buzz Hargrove, Jim O'Neil, and the entire Master Committee, I proudly recommend this agreement for your ratification.

**Dave Vyse**  
Chairperson,  
CAW-GM Master Bargaining Committee

## Message from Jim O'Neil



Without doubt, our three-week strike at General Motors will go down as a historic struggle for GM workers and for the CAW as a whole.

Our union stood up to the largest corporation in the world, a company whose arrogance is legendary. We were told over and over again—by management, by the so-called "analysts," by the media—that our struggle was hopeless.

Even though GM made more profits last year than any company in Canadian history, we were supposed to believe that it is a financial basketcase on the verge of bankruptcy. We were expected to happily give up our jobs, allow our work to be sold to the lowest bidder, all so that GM could be a little bit more profitable. We were told that "being competitive is the only guarantee of job security"—but the more competitive GM became, the more jobs we lost.

The GM section of our union challenged this false ideology of competitiveness with a discipline and determination that brings honour to the whole CAW. We rejected everything that the 1990s has come to stand for: unprecedented power and profits for corporations and executives, standing in sharp contrast to chronic insecurity and unemployment for the rest of us.

Like Buzz, I have never been prouder of our union than I was when CAW members occupied the Oshawa Fab plant, preventing GM from moving 75 dies to the U.S. This daring and decisive action was the turning point of the strike. It forced GM management to take the negotiating process seriously, and awakened them to the reality that our strike would not be broken. Who knows—maybe it can be a turning point for Canada's whole labour movement in this grim decade, just like the sit-down strike at GM's Flint factory was for unions in the 1930s.

But I was just as proud of our whole union two days later, when 700 delegates from across the country gathered in Toronto and voted virtually unanimously to double their dues, if necessary, to support the GM strikers. As National Secretary-Treasurer, I am all too aware of the financial dangers posed to our union by a long strike at GM (our biggest employer).

The fact that CAW members from all provinces and all industries were willing to double their dues sent another message to GM about our ability to win this strike—one that was just as determined and militant as the occupation of the Fab plant. And it was testimony to the solidarity of our "new" CAW, which unites an incredible mixture of workers (auto and airlines, restaurants and railways, miners and manufacturers) in a common struggle for decent wages, security, and respect.

Our new agreement takes major steps forward in terms of job security and creating better jobs for workers. It not only provides better

wages and improved benefits, but it also establishes the concept of work ownership and puts strict limits on outsourcing. Work ownership means that workers will have a say in maintaining jobs in their community when the work they do is productive, high quality, at reasonable cost and profitable.

Our contract also protects workers from government rollbacks of employment standards. The employment standards law which existed before the election of the Harris government has now been locked into contract language—covering everything from parental leave, to lunch periods, to protection against lie detector tests, to severance and termination rights. The contract further enshrines our right to refuse unsafe work, protecting members from future legislative changes that would water down this important principle.

The benefits package has been strengthened so members get more support while on maternity, adoption and parental leave. It also includes expanded vision and dental care, and new counseling coverage.

I want to conclude by thanking the members of the GM Master and Local bargaining committees for their tremendous leadership, and every GM worker for making our picket lines so solid. I join with Buzz Hargrove, Dave Vyse, and the rest of the GM-CAW Master Committee in recommending this agreement for ratification.

**Jim O'Neil**  
CAW National Secretary-Treasurer



## Wage Increases

2% Annual Improvement Factor in each year of the agreement.

Fold-in 63 cents of the current COLA float, leaving a 5 cent per hour float.

Wage increases including COLA are expected to increase by over \$2.20 over the life of the agreement, or over 10%.

The COLA formula continues in its present form for the first 3 payments, and then is improved in two stages, effective with the September 1997 and September 1998 COLA payments.

Special skilled trades wage adjustment of 20 cents per hour in the first year of the agreement, made after application of the first year AIF.

### Increases in Base Rate

	Assembler \$21.34	Production Technician \$21.63*	Electrician \$25.81
<b>Current Base</b>			
First year Increase (2%)	.43	0.43	.72
COLA Fold-in	.63	0.63	.63
<b>Base Rate, 1st Year</b>	<b>\$22.40</b>	<b>\$22.69</b>	<b>\$27.16</b>
Second Year Increase (2%)	.45	0.45	.54
<b>Base Rate, 2nd Year</b>	<b>\$22.85</b>	<b>\$23.14</b>	<b>\$27.70</b>
Third Year Increase (2%)	.46	0.46	.55
<b>Base Rate, 3rd Year</b>	<b>\$23.31</b>	<b>\$23.60</b>	<b>\$28.25</b>
* \$21.34 + \$.29 add-on			

### Wage and COLA Increases

		Assembler \$22.02	Production Technician \$22.31	Electrician \$26.49
<b>Current Earning</b>				
<b>First Year:</b>	Base	.43	.43	.72
	*new COLA	.31	.31	.31
	<b>Increase</b>	<b>.74 (3.4%)</b>	<b>.74 (3.3%)</b>	<b>1.03 (3.9%)</b>
		<b>\$22.76</b>	<b>\$23.05</b>	<b>\$27.52</b>
<b>Second Year:</b>	Base	.45	.45	.54
	*new COLA	.33	.33	.33
	<b>Increase</b>	<b>.78 (3.4%)</b>	<b>.78 (3.4%)</b>	<b>.87 (3.2%)</b>
		<b>\$23.54</b>	<b>\$23.83</b>	<b>\$28.39</b>
<b>Third Year:</b>	Base	.46	.46	.55
	*new COLA	.27	.27	.27
	<b>Increase</b>	<b>.73 (3.1%)</b>	<b>.73 (3.1%)</b>	<b>.82 (2.9%)</b>
		<b>\$24.27</b>	<b>\$24.56</b>	<b>\$29.21</b>
<b>Total Increases</b>	Base	\$ 1.34	\$ 1.34	\$ 1.81
	*new COLA	\$ .91	\$ .91	\$ .91
		<b>\$ 2.25 (10.2%)</b>	<b>\$ 2.25 (10.1%)</b>	<b>\$ 2.72 (10.3%)</b>

\*COLA will vary depending on actual inflation rate.



# Outsourcing: Job Security and Work Ownership

The union has achieved a major breakthrough on outsourcing. In past agreements we have developed programs that limit layoffs and provide income security for our members. In this round of bargaining we have gone further. We have successfully curtailed the company's right to outsource our jobs.

Going into bargaining the union promoted the concept of work ownership — protecting the work which we have historically done.

At GM, we had the additional problem that the company had already announced — prior to the opening of negotiations — the proposed sale of the Windsor Trim and Oshawa Fab plants. The sale of these two plants was not reversed, but as we explain elsewhere,

we were able to get unique and very important protections for the affected workers.

This agreement advances that principle through three significant provisions:

## 1. Plant Closing Moratorium:

The Plant Closing Moratorium protects our existing plants against closures or sell-offs. The letter reads: "the Company will not close or sell any plant, in whole or in part, covered by this Collective Agreement".

## 2. No Outsourcing of Major Operations:

The company agrees that it will "not outsource any major

operations during the life of the agreement." These major operations, for example, would include production operations such as instrument panels, doors, bumpers, engine dress-up, tires and chassis. It further includes support operations, activities and services such as janitorial, transportation, material handling, inspection and repair.

## 3. Protecting Employment Levels Against Outsourcing:

The company "commits there will be no reduction in community employment levels as a result of outsourcing during the term of this agreement." If, for example, after advance notification to the union the company moved three jobs out of a plant it would also have to indicate its plans for replacing those three jobs so that the employment level would not be affected by the outsourcing.

These three milestone achievements together with our job protection and income support programs provide an unparalleled level of job and income security for General Motors workers.

**The issue of outsourcing emerged in large part because of GM's regular and threatened outsourcing of work — often preferred jobs. In this set of negotiations we were able to restore almost 800 GM announcements of work scheduled for outsourcing: over 400 in Oshawa, 168 in Ste. Therese and 195 in London.**

**CAW  TCA  
CANADA**

Produced by the  
CAW Communications Department

## Sale of Oshawa Fab

Every worker will have a chance to return to GM Oshawa plants.

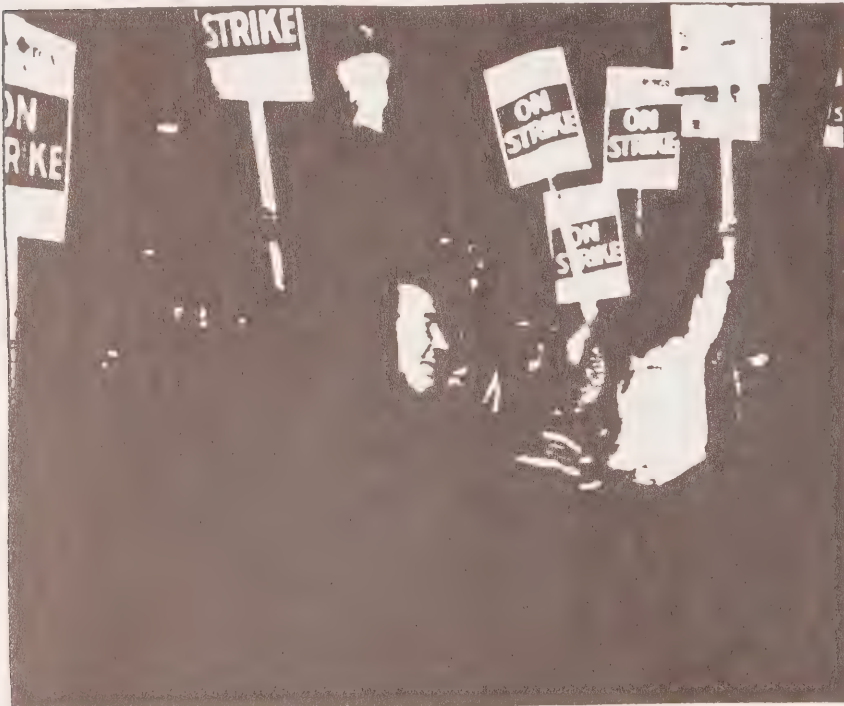
1,875 Document 12 buy-outs city-wide (unused are banked).

GM back-up payer if new owner can't meet benefit, pension, insurance, or

income security commitments (through to 2005).

Pensions: Service at GM, plus the first nine years of service at the new company, at the same rate as someone retiring at GM in same circumstances.

Full GM benefits at retirement.



## Sale of Windsor Trim

1,280 Document 12 buy-outs (unused are banked).

GM back-up payer if new owner can't meet benefit, pension, insurance, or income security commitments (through to 2005).

Pensions: Service at GM, plus the first nine years of service at the new company, at the same rate as someone retiring at GM in same circumstances.

Full GM benefits at retirement.

Preferential hire to other GM plants while working for the new owner of the Trim plant (on a time-for-time basis)

**STRIKE SETTLEMENT PAY**  
A \$350 Strike Settlement Payment has been negotiated.

## RECOMMENDATION

The CAW-Canada/General Motors Master Bargaining Committee has negotiated a tentative agreement that enshrines the principle of work ownership - protection against outsourcing, improvements in wages, benefits, shorter work time and significant gains in a number of other important areas.

We unanimously recommend this agreement to you and urge you to vote for its ratification.

**3488-95-OH John Sellers, Mario Romagnuolo, Gerald Pelley and CAW Local 222, Applicants v. Robert Taylor, Don Sawyer and General Motors of Canada Limited, Responding Parties**

**Health and Safety - Remedies - Applicant employees alleging unlawful reprisal in form of two-week suspensions imposed as result of work refusal - Board finding that employees not having genuine health and safety concern regarding increased speed on production line - Board also satisfied that employees did not have reasonable basis for honest belief that they or other workers were endangered - Board, however, exercising discretion under subsection 50(7) of the Act to substitute five-day and one-day suspensions for two-week suspensions imposed by employer**

**BEFORE:** *G. T. Surdykowski*, Vice-Chair, and Board Members *S. C. Laing* and *H. Peacock*.

**APPEARANCES:** *Paul Goggan, Jim Hoy, John Sellers, Mario Romagnuolo and Gerald Pelley* for the applicants; *Joy Hulton, Elisabeth Campin, Mike Kennedy, Robert Taylor, Don Sawyer and Dan Derlis* for the responding parties.

**DECISION OF THE BOARD;** April 25, 1997

I The Complaint

1. This is a complaint under section 50(1) of the Occupational Health and Safety Act which provides that:

**50.-** (1) No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the Coroners Act.

2. The applicants allege that the responding parties have treated the individual applicants in a manner contrary to clauses 50(1)(b), (c) and (d) as a result of a work refusal they engaged in on August 11, 1995 in General Motors of Canada Limited's ("GM") Plant #2, Oshawa Car Assembly Plant. More specifically, on August 21, 1995, the applicants Sellers, Romagnuolo and Pelley were each assessed a two week suspension. In each case, GM explained that this discipline was being imposed:

As a result of your unauthorized action on the day shift of August 11, 1995 a Production loss occurred. These actions cannot be tolerated. In view of this and your prior disciplinary record the above penalty is assessed.

II The Facts

3. The three individual applicants are, and were at all material times, employees in a bargaining unit represented by the applicant CAW Local 222 (the "Union"). At all material times, they were



employed as operators on the “mast jacket line” in Plant #2. This line, which no longer exists, produced steering columns for the cars which are assembled in the plant. In essence, it was a sub-assembly conveyer which merged into an instrument panel line.

4. There is no dispute regarding the lay-out of the mast jacket line or how it was supposed to function. The overall specifications for the line in that respect were as follows:

Jobs per hour - 85.

Spacing between jobs - 5 feet 4 inches.

Overall line speed - 7 feet 6 inches per minute.

Time allotted per job (“cycle time”) - 42 seconds (except for the “mast jacket transfer” station which had a cycle time of 43.2 seconds).

There were six work stations on the mast jacket line:

- (a) “mast jacket pick” - This was Gerald Pelley’s station on August 11, 1995. At this station, the operator was required to select the appropriate mast jacket from one of several bins, take it to the line where he would position and clamp it down, and then secure it with a bolt using an overhead air gun. If necessary, he also installed a shifter cable. He would then hang the mast jacket on the conveyer, secure it there, and release it with the “schedule” for that particular mast jacket. On average, it took 36.0 seconds to complete each job. The allowed time for each job was the line cycle time of 42 seconds. The operator had an “E-stop” button available to him which he could use to stop (and restart) the line if he considered it necessary.
- (b) “mast jacket sprayer” - All mast jackets started black. This operator would spray paint each mask jacket one of four interior colours. It took an average time of 33.6 seconds to complete each job at this station, compared to the allowed cycle time of 42 seconds per job. This operator also had an E-Stop button.
- (c) “steering wheel install” - Mario Romagnuolo was the operator at this station during the day shift on August 11, 1995. After being spray painted, the mast jacket would move through an oven (presumably to bake the paint onto the mast jacket) and then to the station where the operator would remove a plastic coating, take a sequenced steering wheel and work it on to the mast jacket, and then secure it with a bolt using an overhead air gun. The operator would also install a mast switch (which contained the various controls). There was a “limit switch” at this station; that is, a toggle switch which “counted” the mast jackets as they passed by and electronically matched the torquing of the bolt unto the mast jacket with each one as it passed the switch. If a bolt was missed, the limit switch would automatically stop the line. The average time per job at this station was 39.0 seconds, compared to the allowed cycle time of 42.0 seconds. This operator worked in a relatively confined space.

- (d) “horn pad install” - John Sellers was the operator at this station on August 11, 1995. Here, the operator would take a sequenced air bag and put it onto the steering wheel, scan the schedule to ensure that it was the correct air bag, and then install it. The average time per job at this station was 37.8 seconds, compared to the allowed time of 42.0 seconds.
- (e) “horn pad secure” - The operator here on August 11, 1995 was Ron Moreau. His job was to secure the horn pad to the steering wheel with two screws under the wheel, and to install a shift lever, hazard switch and tilt lever. At this station, the average time per job was 37.4 seconds, against the allowed time of 42 seconds. There was an E-stop button at this job station.
- (f) “mast jacket transfer” - At this station, the mast jacket line in effect merged into the instrument panel line. The operator would take each mast jacket and install it to an instrument panel, make the necessary connections and release the panel. There was a limit switch at this station as well. The average time per job at this station was 36.6 seconds. The allowed cycle time was 43.2 seconds.

5. On August 11, 1995, the mast jacket line operators, including the three individual applicants, began their shift at 6:48 a.m. Pelley and Romagnuolo testified that the line seemed to be running more quickly than usual from the beginning of the shift. However, Pelley also said that it took him 45 minutes or so to realize that the line was running too fast, and Romagnuolo said it was between 7:45 and 8:00 a.m. that he realized something was wrong. Sellers testified that after a short time he started to have trouble keeping up. Similarly, Moreau said that the line was stopping and starting but seemed to be running more quickly than usual. Romagnuolo confirmed that he had trouble keeping up and that as a result he had to let the line stop (presumably by operation of the limit switch at his work station) several times. Sellers also testified that the line stopped intermittently between 7:30 and 8:28 a.m.

6. Romagnuolo's, Seller's and Moreau's work stations were close together at the point in the line where it turned and took the mast jackets back in the direction from which they had come, toward the mast jacket transfer station. When the three of them discovered that they were all having trouble keeping up with the line they decided to time it themselves. Between 8:15 and 8:20 a.m. Romagnuolo timed several jobs and concluded that the line was running at a cycle time of 35 seconds.

7. Pelley seemed to suggest that when he discovered he was having trouble keeping up he talked with other (unspecified) employees who also said the line was running fast. The location of his work station and the circumstances were such that it was unlikely that he had any such discussions before the line was stopped at 8:28 a.m.

8. Robert Taylor was a supervisor of the instrument and panel and mast jacket lines on August 11, 1995. When the mast jacket line stopped at approximately 8:28 a.m., he asked the team leader (who was a bargaining unit employee) why. The team leader replied that he did not know and went to investigate. When he returned, the team leader told Taylor that the operators (he did not specify which ones) felt that the line was running too fast and were refusing to work. Taylor approached Pelley who said he was “calling a section 43” because the line was running too fast and it was unsafe. Taylor went to where Romagnuolo, Sellers and Moreau were stationed. They also told him that the line was running too fast. Taylor said that he would time the line, but Romagnuolo asked that an industrial engineer do it.

9. Taylor paged Dan Derlis, who is an industrial engineer at Plant #2. As such, he deals with production standards disputes, sets up jobs, organizes manpower and work processes, and generally works at optimizing the production process. Taylor also called Paul Goggan, a union health and safety representative (and the applicants' representative at the hearing), Drew Almond, the employer health and safety representative, Don Sawyer, the area manager, and Mike Healey, the general foreman.

10. It was approximately 8:30 a.m. when Taylor paged Derlis. He told Derlis that the mast jacket line seemed to be running too fast and asked him to come to verify the line speed. When Derlis arrived shortly thereafter, Taylor repeated what he had already told him and Derlis agreed to time the line. Derlis went to the operators, told them that he would time the line and explained that the line had to be running in order for him to do so.

11. The operators co-operated, and at approximately 8:36 a.m., the line started up again. Derlis timed the line until 8:48 a.m. when the line stopped for a regularly scheduled break. Derlis ascertained that the line was indeed running too fast. He timed it at 35.5 seconds per cycle.

12. While Derlis was timing the line, Goggan arrived on the scene. He said something to the effect that he thought that there had been a work refusal but the line was running and that he was going to call the Ministry of Labour. He then left the area.

13. Derlis advised Taylor and Sawyer that the line cycle time was in fact too fast. As a result, a call was put into the maintenance foreman to come to slow the line down to the proper cycle time of 42 seconds. The maintenance foreman and an electrician arrived a short time later.

14. The operators returned from break at 9:06 a.m. The maintenance foreman and electrician waited at the control panel, which was well down the line from the mast jacket transfer station, but the line did not begin running immediately after the break.

15. When Taylor and Sawyer went to find out why the line had not started up after the break, they met Pelley who indicated by words or actions, "not me this time". Accordingly, Taylor approached Romagnuolo, Sellers and Moreau and asked if they were refusing to work. Romagnuolo and Sellers indicated that they were refusing to work under section 43 of the Occupational Health and Safety Act, because the line was moving too fast.

16. Taylor advised Romagnuolo and Sellers, and also Moreau, that the line speed was going to be adjusted but the line had to be moving in order for the line speed to be adjusted to the correct cycle time. Upon being told that, the operators agreed to go back to work and the line started up again at approximately 9:15 a.m. They took five to ten minutes to adjust the line speed down to the proper cycle time of 42 seconds.

17. Subsequently, a Ministry of Labour Health and Safety Inspector arrived. He obtained written statements from each of Pelley, Sellers, Romagnuolo and Moreau, and subsequently, on August 18, 1996, the inspector issued orders under section 43(4) of the Occupational Health and Safety Act, against each of them. Later, these orders were quite rightly rescinded.

18. GM did not consider the August 11, 1995 work stoppage to be a legitimate section 43 work refusal, or that the increased speed of the mast jacket line otherwise raised any health and safety concerns. Instead, GM took the view that this was really a production standards dispute similar to one which had occurred in April, 1995 when the speed of the the mast jacket line had also been higher than what it should have been, although not as high as it was on August 11, 1995. On that earlier occasion, the line had not been stopped. Instead, the problem was dealt with as a production standards dispute under Article 167 of the collective agreement between GM and the Union, and the grievance that was



filed in that respect was settled. In the result, GM determined that discipline was appropriate and assessed two weeks' suspensions against each of Pelley, Sellers or Romagnuolo as aforesaid.

### III Decision

#### (a) The Reprisal Issue

19. Sections 43(3) through (5) of the Occupational Health and Safety Act, provide as follows:

(3) A worker may refuse to work or do particular work where he or she has reason to believe that,

- (a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself; or
- (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker.

(4) Upon refusing to work or do particular work, the worker shall promptly report the circumstances of the refusal to the worker's employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

- (a) a committee member who represents workers, if any;
- (b) a health and safety representative, if any; or
- (c) a worker who because of knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them,

who shall be made available and who shall attend without delay.

(5) Until the investigation is completed, the worker shall remain in a safe place near his or her work station.

Contrary to what it appears some believe, this provision does not import a purely subjective standard into occupational health and safety matters. It is well settled that before a worker can legitimately refuse to work under section 43 of the Act, s/he must have an honest and reasonable belief that s/he or another worker is likely to be endangered if s/he continues to work. That is, the worker's belief must be subjectively honest but objectively reasonable. Because of the importance of health and safety in the workplace, and the potential seriousness of the adverse consequences if an error is made, the objective standard which is applied is not a particularly high one, and the benefit of the doubt is properly given to workers.

20. Whatever they may have come to believe when this matter came on for hearing, the Board is not satisfied that on August 11, 1995 the individual applicants actually believed that the increased speed of the mast jacket line endangered them or any other worker. Just as a worker need not utter the words "health and safety" or any other particular words, or even be aware of the Occupational Health and Safety Act, in order to obtain the protection of that Act, saying the words "health and safety" or "section 43" or otherwise invoking the Act does not operate as some sort of charm or incantation which operates to protect anyone who utters it. While health and safety is a sufficiently important workplace issue that it is appropriate to give the benefit of the doubt to workers who seek to invoke the

Occupational Health and Safety Act, it is not appropriate to permit anyone to trivialize it with improper refusals to work in the name of health and safety.

21. It is apparent that the mast jacket line was running fast from the beginning of the shift at 6:48 a.m. on August 11, 1995. But the individual applicants did not suspect that that was the case until some 45 minutes after a shift began, continued to work for another 45 minutes until Romagnuolo timed it and confirmed their suspicions, and it was not until 8:28 a.m., one hour and thirty minutes into the shift, that they did not restart the line after a stoppage.

22. There is nothing in the evidence which suggests that anything occurred during that one hour and thirty minutes between 6:48 and 8:28 a.m. which created an actual or perceived health and safety problem, or which suggests that any of the operators was or appeared likely to be in danger. What did happen was that the operators were forced to work faster in order to try to keep up, and when they confirmed for themselves that the line was in fact running too quickly, they were annoyed (with cause in our view). The length of time that it took them to suspect that that was the case, and the fact that they found it appropriate and were able to confirm their suspicions by timing the line themselves all suggest that the increase in the line's speed was not so significant that a worker would reasonably have believed that he or another worker was likely to be endangered. This is understandable since at a cycle time of 42 seconds the line moved at 1.5 inches per second, while at a cycle time of 35 seconds, it moved at 1.8 inches per second, a difference of .3 inches per second, or 18 inches per minute.

23. Notwithstanding this, the actual cycle time of 35.5 seconds is in fact faster than the average time required per job at each work station except for the mast jacket spray. Clearly, the operators would be unable to keep up, and one would expect this to result in a situation where the limit switches would periodically be tripped and cause the line to stop, which is in fact what happened intermittently that morning. But that is the purpose of limit switches - to regulate production and prevent an unsafe situation from developing. Several of the operators also have E-stop buttons which enable them to stop the line for various reasons, including concerns regarding health and safety. On August 11, 1995, none of the operators found it necessary to use an E-stop button to stop the line. Further, the individual applicants readily co-operated with the timing investigation, which suggests that they did not really think they were in any danger, and generally conducted themselves as though it was really a production standards dispute. Accordingly, notwithstanding that the individual applicants said or intimated that they were concerned for their health and safety, the Board is not satisfied that they in fact were.

24. The Board is also satisfied that the individual applicants did not have a reasonable basis for an honest belief that the increased speed of the mast jacket line endangered them or any other worker(s). The applicants speculated that the increased line speed on August 11, 1995 could have resulted in ergonomic or tripping hazards, or hazards having to do with the hoses of the air guns which some of them used. But again, there is no evidence that any of these problems in fact occurred that morning, that anyone expressed a concern in that respect at the time or that there was any reasonable basis for anyone to think that they would. It appears that the concerns expressed at the hearing were conceived after the fact.

25. It is clearly possible for a production line to run so fast that it creates a health and safety problem which would justify a work refusal under section 43 of the Occupational Health and Safety Act. However, in this case, the Board is satisfied that the increase in the speed of the mast jacket line on August 11, 1995 created neither a health and safety problem, nor any other reason for the applicants to believe that they or any other worker is likely to be endangered.

26. The Board is also satisfied that what occurred on August 11, 1995 is properly characterized as a production standards dispute, like the one which occurred in April, 1995, and that it ought to have

been dealt with in the same way. Instead, the applicants sought to cloak themselves in the Occupational Health and Safety Act. The Board is satisfied that they had no justification for doing so.

27. In the result, the Board is satisfied that the individual applicants' work refusal on August 11, 1995 was not a proper work refusal under the Occupational Health and Safety Act. The Board is also satisfied that GM had just cause to discipline the individual applicants, and that the assessment of discipline in this case does not constitute a "reprisal" under section 50(1) of the Occupational Health and Safety Act. That part of this complaint is therefore dismissed.

(b) Discipline Imposed Considered

28. That, however, does not end the matter. Section 50(7) of the Occupational Health and Safety Act provides that:

(7) Where on an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (2), the Board determines that a worker has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances.

This raises the question of whether the two week suspensions assessed to each of the individual applicants was justified. In the Board's view, they were not, and the Board considers it appropriate to exercise its discretion to substitute lesser penalties for the suspensions imposed by GM.

29. We note that at the hearing, the applicants' asserted that the three individual applicants and Moreau all engaged in a work refusal both before and after the scheduled morning break on August 11, 1995. That is not consistent with either their evidence, or the evidence of the management personnel involved. The Board is satisfied that their position at the hearing was an expression of the individual applicants and Moreau's solidarity with and support for each other, and that, on the evidence, only Pelley actually engaged in an improper work refusal before the break, and only Sellers and Romagnuolo did so after the break.

30. Taylor testified that he actually wrote out the discipline imposed, but that "upper management" (who the evidence reveals was Mike Kennedy) made the decision that a disciplinary response was appropriate, and that an individual in "labour relations" (who the evidence reveals was Joyce Fisher) gave Taylor the words to use. Kennedy testified that "we", presumably referring to Fisher and himself, agreed that it was appropriate to apply discipline consistent with an improper work stoppage and loss of 17 minutes production time, which he estimated resulted in a loss of 20 to 22 production units. But Taylor also testified that the specific penalty was determined by "labour relations", again presumably Fisher. Neither Fisher nor anyone else from "labour relations" testified. Accordingly, there is no direct evidence before the Board of how the employer arrived at its determination that a two week suspension was appropriate for each individual applicant.

31. What is before the Board is the evidence of what actually occurred and a document entitled "Management's Statement of Unadjusted Grievance" for each individual applicant. Presumably these documents reflect the basis for the decision that two week suspensions were appropriate. The review of the events contained in each of these documents is not consistent with the evidence before the Board.

32. In this respect, there are a number of statements of fact in the grievance documents which are inconsistent with the evidence before the Board. For purposes of the Board's considerations under section 50(7) of the Occupational Health and Safety Act, the following are the most significant. The documents correctly state that the line was operating at 9 feet per minute, but incorrectly state that the



specified rate was 8 feet per minute. In fact, the specified rate was 7.5 feet per minute. More importantly, the Pelley document states that the line speed was adjusted immediately after the investigation informed that the line speed was running too fast, and that after that the “affected” employees; that is, the individual applicants:

“continue to withdraw their services which resulted in down time of approximately 8(8) minutes. Shortly thereafter the scheduled break commenced. Following that Senior Advisor Sawyer observed that the line was still not in operation and asked all the affected operators as to reason why. At which time the grievant along with employees J. Sellers ... and M. Romagnuolo stated that the line was running too fast therefore they were refusing to work ...” (sic).

This chronology is not correct. In fact, the line stopped and did not run for 8 minutes before Derlis determined that it was running too fast. The line speed was not adjusted until after that, and after the scheduled break. There is no evidence that Sawyer had any discussion with Pelley prior to the break, and there is no credible evidence that Pelley continued to refuse to work after the break. Although Sellers and Romagnuolo refused to work after the break, there is no credible direct evidence that they actually refused to work prior to the break. There is no evidence that any employee refused to work after the line speed was adjusted. On the contrary, the employees, including the individual applicants, co-operated with the investigation, and when it was finally explained to them that the line speed would be adjusted but that the line had to be running in order for the adjustment to be made, they also co-operated and re-started the line. Indeed, Taylor specifically stated that Pelley refused to work before the break and that he understood that that was what Pelley was disciplined for, and that Sellers and Romagnuolo refused to work after the break and that he understood that that was what they were disciplined for.

33. Accordingly, it appears that the disciplinary decision was based upon an incorrect understanding of what had occurred. Further, it appears that no management person either noticed or bothered to find out why the mast jacket line was stopping intermittently during the morning of August 11, 1995. Perhaps this is because it was normal for the line to stop intermittently, to the extent that Derlis testified that on average, the line was stopped for 8 to 9 minutes out of every production hour. More significantly, it is apparent that no one bothered to speak to the applicants either during or immediately after the morning break to advise them that Derlis had determined that the line was in fact moving too quickly, that the line speed would be adjusted to the correct cycle time, and that the line would have to be running in order for that adjustment to be made. Indeed, no one bothered to tell any of this to the operators until just before the line re-started at 9:16 a.m. Instead, it appears that management simply assumed that after the break the operators would re-start the line without being told that their concern had been recognized and was being addressed. In the Board’s view, this was the major reason for the work stoppage and refusal after the break. Indeed, when Taylor and Sawyer approached Sellers and Romagnuolo after the break, the first thing they did was to ask whether they were refusing to work, and only after being answered in the affirmative did Taylor and Sawyer indicate that the line speed would be adjusted and that the line would have to run in order for that adjustment to be made. In the Board’s view, the 9 minute break in production after the break could probably have been avoided if GM had handled the matter differently. Nevertheless, Sellers and Romagnuolo did act improperly, and some discipline was appropriate.

34. Further, there is no evidence that whoever determined the amount of the discipline assessed took the relevant individual circumstances of the individual applicants into account. For example, it appears that at the time, Pelley had been a General Motors employee for approximately twelve years, and that he had been at Plant #2 since October 1990 and had a plant seniority date of October 15, 1990. Pelley also had a disciplinary record as follows:

- (a) February 23, 1995 - tardy arrival - written reprimand;

- (b) February 23, 1995 - failure to return to work - one day suspension;
- (c) August 2, 1995 - failure to complete job assignment - three day suspension.

Sellers had worked for General Motors for seven years. He also has a seniority date of October 15, 1990. He had no prior disciplinary record. Romagnuolo had worked for General Motors for nearly 18 years at the time. His seniority date is October 15, 1990 as well, and Romagnuolo had no prior disciplinary record.

35. In the result, we have three employees with the same plant seniority date. In fact, however, one had twelve years service and a relevant disciplinary record and had improperly refused to work for 8 minutes; one employee who had seven years service, no disciplinary record and who had refused to work for 9 minutes; and one employee with 18 years of service, no disciplinary record who had refused to work for 9 minutes.

36. The collective agreement between GM and the Union does not contain a specific penalty for the misconduct in this case, and there is no evidence of any schedule or past practice that the employer relied on in determining that a two week suspension was appropriate for each of the individual applicants.

37. In these circumstances, the Board is satisfied that identical two weeks' suspensions for each of the individual applicants cannot be justified, and indeed, that a two week suspension was not justified for any of them.

(c) Substituted Penalty and Ancillary Relief

38. Considering the nature of the misconduct and each individual's participation in it; the uncertainty as to the actual effect on production in each case; the manner in which management dealt with the situation after the break; the lack of any evidence regarding what was meant by "discipline consistent with the work stoppage"; the seniority, years of service and disciplinary records of each individual applicants; and the discipline which was imposed on Pelley earlier in 1995 for failing to return to work and failing to complete a job assignment, the Board finds it appropriate to strike the two week suspensions assessed to each applicant and to substitute the following lesser penalties which the Board considers just and reasonable as follows:

- (i) for Pelley: a suspension of five days without pay;
- (ii) for Sellers: a one day suspension without pay;
- (iii) for Romagnuolo: a one day suspension without pay.

39. The Board notes that Article 28(b) of the collective agreement between GM and the Union provides that in imposing discipline the employer will not take into account "prior infractions" which occurred more than one year previously. Nevertheless, it is not entirely clear that a disciplinary record which is more than one year old cannot be used by anyone for any purpose. The Board therefore orders the employer to remove the two week suspension assessed against each of the individual applicants with respect to the events of August 11, 1995 from their respective records, and to substitute therefor suspensions of 5 days for Pelley, and one day for each of Sellers and Romagnuolo. Further, the Board orders the employer to compensate the individual applicants for all wages and benefits which they lost for the days they were suspended in excess of the discipline which the Board has determined was appropriate. The applicants are entitled to interest on the amounts due in that respect.

40. In the Board's view, no other relief is necessary or appropriate.

41. The Board will leave the calculation of the amounts due to the parties. The Board will remain seized in that respect, and in the event that the parties are unable to resolve that issue, the Board will deal with it upon the written request of any of the parties.

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**0018-96-R; 0019-96-G** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Applicant v. **Global Mechanical Ltd.**, Intercontinental Plumbing and Fire Protection Co. Ltd., Dynamic Power Excavating Ltd., IPJ Investments Ltd., Responding Parties

**Construction Industry - Construction Industry Grievance - Reconsideration - Related Employer - Employer seeking reconsideration of related employer decision on ground that Board failed to set out counsels' arguments and failed to address the arguments, including case law - Board noting that in order to fulfill its goal of timely decision-making, it is often required to determine how much detail a given decision warrants - Where law is relatively settled, the evidence relatively brief, and the outcomes glaringly apparent, Board may decide not to issue detailed reasons - The seven-page reasons for decision, in which the Board set out the relevant facts and applied its understanding of the law to those facts, were adequate - Reconsideration application dismissed**

**BEFORE:** *Russell G. Goodfellow*, Vice-Chair, and Board Members *F. B. Reaume* and *J. Redshaw*.

**DECISION OF THE BOARD;** March 20, 1997

1. This is an application for reconsideration. The application relates to a decision of this panel of the Board dated January 23, 1997. In that decision, the Board determined and declared that there had been a "sale of business from Intercontinental Plumbing and Fire Protection Ltd. to Global Mechanical Ltd. and that the latter company is bound to the collective agreement between the former company and the applicant".

2. The basis for the request for reconsideration is that:

"... the Board erred in failing to set out the arguments of the parties on the sale of a business issue (and on the related employer issue)."

and that

"... the Board erred in its decision by failing to address the arguments raised by both parties, including case law, in determining that a sale of business occurred."

3. Pursuant to section 114(1) of the Labour Relations Act, 1995 the Board has a broad discretion to reconsider any decision or order made by it and to vary or revoke any such decision or order. However, the Board has repeatedly indicated that it will not reconsider its decisions unless there are good reasons for doing so. This approach furthers the interest of finality in Board decision-making and, in practical terms, discourages parties from seeking to delay the implementation of Board orders. The Board has been prepared to reconsider an earlier decision or order where that decision contains an obvious error; where the request raises important policy issues which have not been adequately addressed; where new evidence is sought to be presented which could not, with the exercise of due



diligence, have been obtained and presented previously and which could, if accepted, make a difference to the decision; and where representations are sought to be made which the party had no previous opportunity to make.

4. In the Board's view, the present application does not establish sufficient grounds for the Board to reconsider its decision. The applicant is correct that the Board's decision did not reproduce the relevant statutory provisions, recite the parties' arguments or refer to the case law presented to it. However, it did provide a seven-page decision in which it set out the relevant facts and applied its understanding of the law to those facts.

5. The Board is sometimes faulted in the labour relations community for not rendering its decisions in an expeditious fashion. In order to fulfill its goal of timely decision-making, the Board is often required to determine how much detail a given decision warrants. In some cases, for example where the issues are complex, the evidence and arguments are detailed and lengthy, and the issues of significance to the broader labour relations community, the Board may err in favour of more detailed reasons even if that means delay in the issuance of that and/or other decisions. In other cases, where the law is relatively settled, the evidence relatively brief, and the outcomes glaringly apparent, the Board will err on the side of brevity and expedition. All of this, of course, is subject to the entitlement of a party to a fair hearing and to the receipt of reasons for the Board's decision. In this case, the Board is satisfied that it has more than met its obligations as a quasi-judicial tribunal subject to the requirements of the Statutory Powers Procedure Act to provide adequate reasons for its decision.

6. Accordingly, the application is dismissed.

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**0171-97-R** David Pentland, Applicant v. Labourers' International Union of North America, Local 1059 Affiliated with A.F. of L. - C.I.O. - C.L.C. O.F.L., Responding Party v. **Ingersoll Plastics Inc.**, Intervenor

**First Contract Arbitration - Practice and Procedure - Representation Vote - Termination - Employees submitting termination application while first contract application pending before Board - First contract application scheduled for hearing commencing two weeks hence - Decision as to whether or not to order representation vote and, if so, when, to be determined by panel hearing first contract application**

**BEFORE:** *Christopher Albertyn*, Vice-Chair, and Board Members *J. A. Ronson* and *H. Peacock*.

**DECISION OF THE BOARD;** April 18, 1997

1. This is an application for termination of the respondent union's bargaining rights.

2. The Board is currently dealing with a first contract application brought by the union under section 43(1) of the Labour Relations Act, 1995 in Board File No. 1838-96-FC. That application is scheduled for hearing on April 30, May 1 and 2 and tentatively on June 9, 12, and 13, 1997.

3. Section 43(23) reads as follows:

**43.** (23) Despite subsection (2), where an application under subsection (1) has been filed with the Board and a final decision on the application has not been issued by it and there has also been filed with the Board, either or both,

- (a) an application for a declaration that the trade union no longer represents the employees in the bargaining unit; and
- (b) an application for certification by another trade union as bargaining agent for employees in the bargaining unit.

the Board shall consider the applications in the order that it considers appropriate and if it grants one of the applications, it shall dismiss any other application described in this section that remains unconsidered.

4. This application should be considered by the panel which hears the application under Board File No. 1838-96-FC and the decision whether or not to order a representation vote in this application, and if so, when, should be determined by that panel.

5. This application should accordingly be considered together with Board File No. 1838-96-FC.

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**0293-96-JD** Iron Workers District Council of Ontario International Association of Bridge, Structural and Ornamental Iron Workers, Local 786, Applicants v. **Jaddco Anderson Limited**, United Brotherhood of Carpenters and Joiners of America, Local 446, Responding Parties

**Construction Industry - Jurisdictional Dispute - Ironworkers' union and Carpenters' union disputing assignment of certain work in connection with installation of removable steel molds and accompanying steel supports for iron runner box at steel mill, including off-loading, rigging, moving, handling, fabrication, cutting, welding, fitting and bolting work - Board finding that work properly assigned to Ironworkers' union**

**BEFORE:** *Jules B. Bloch*, Vice-Chair, and Board Members *W. N. Fraser* and *G. McMenemy*.

**APPEARANCES:** *Gary Caroline* and *Gordon Verdecchia* for the applicants; *David L. Brisbin* and *Craig Mosher* for Jaddco Anderson Limited; *David McKee* and *Gil Scott* for United Brotherhood of Carpenters and Joiners of America, Local 446.

**DECISION OF THE BOARD;** March 18, 1997

1. This is a jurisdictional dispute complaint brought pursuant to section 99 of the Labour Relations Act, 1995 (the "Act").
2. A consultation was held in this matter and the Board determined that it was unnecessary to hold a formal hearing, and that the assignment of work could be decided on the material filed.
3. The work in dispute is the off loading, rigging moving, handling, fabrication, cutting, welding, fitting, bolting, and installation of removable steel molds and accompanying steel supports for an iron runner box at Algoma Steel.
4. The work in dispute was assigned by Jaddco Anderson Limited ("Jaddco") to members of the applicant International Association of Bridge, Structural and Ornamental Iron Workers, Local 786 (the "applicant" or "Local 786").

5. The project involves the relining of the iron runner trough at the number 7 blast furnace at Algoma Steel in Sault Ste. Marie. The blast furnace is the initial stage of the steel refining process. Iron ore is melted at very high temperatures in a large steel furnace lined with heat resistant bricks. When the ore has reached the proper temperature, a hole is opened in the furnace and the molten iron runs out of the furnace and down a 50 foot sloped trough called an "iron runner".

6. Formerly a construction contractor would be hired to scrape off the old refractory material from the bricks and pour and pack new refractory material on top of the bricks. The refractory material was generally made of clay and the contractor would be required to pack the clay using pneumatic hammers. This procedure cost significant amounts of money and was very time consuming, in part because it was difficult to ensure the accuracy of the angles and the smoothness of the trough surface using this method.

7. Jaddco received the contract to rebuild this trough. Part of the rebuilding of this furnace included the use of a new technology to create a lining which would allow the molten iron to flow down the slope of the trough. This new technology involved the use of "dry vibe" and a steel casting mold. This new system and method would eliminate the need to rebuild the trough at the end of its life, or when a section was worn out.

8. The system being constructed at the Algoma Plant is designed to allow the plant workers themselves to install a new dry vibe lining in the iron runner. Jaddco was contracted to construct a removable and reusable steel mold which is bolted onto steel supports which are embedded into the cast house floor every four feet along the runner system. The bolt holes drilled in the steel supports correspond to the required slope of the runner system. The dry vibe is placed, vibrated and then heated. Once it is set, the cast is removed. What is left after this process is a sloped trough which is smooth and at the angle necessary for the iron molten to flow down.

9. For the following reasons, we find that the work in dispute is the work of the ironworkers.

10. The skill set necessary to complete this job includes welding and cutting ten inch structural steel, and the rigging, handling and installing of structural steel. The carpenters have, cut, welded and rigged structural steel in the past, however, it is clear that those skills do not form part of the carpenters core skills. Rigging, welding, cutting and installing structural steel are the core skill of the ironworkers. In our view the criteria of skill and ability favours the ironworkers.

11. In our view the trade agreement does not apply to this work. The work in question does not include the on site installation, fabrication of steel supports and braces in respect of concrete forms. We view the structural steel beams, which are embedded in the floor of the steel mill, as an integral and permanent part of the "iron runner". We find that Jaddco was constructing a permanent casting system which would allow in-plant forces to reline the iron runner with dry vibe on an as needed basis.

12. In respect of employer practice we note that this type of system was installed elsewhere in the Province and the carpenters did not claim the work at that time. Although this in and of itself does not create a jurisdictional award, it certainly supports the view that this work is in fact the work of the ironworkers.

13. It is true that carpenters set anchor bolts, from time to time rig structural steel, and even as we understand it weld structural steel for the purpose of creating pile drivers. However, the skills referred to above are periphery skills for the carpenter. In our view, the ability to do certain skills cannot, on its own, capture jurisdiction which is clearly the core skill set of another trade.



The second complaint relates to the posting, in December, 1995 and again in March 1996, of portions of the union's response to the earlier complaint, on the OPSEU bulletin board at the workplace. The parts of the document which related to Scherk's conduct were highlighted. The applicant made several attempts to have these documents removed, which eventually succeeded in or about March 1996. After the applicant complained to management about the posting, Scherk allegedly came into his office and confronted him, calling him a "baby" for making the complaint.

Finally, during the OPSEU strike in March 1996, the applicant approached Scherk to get his strike pay after he allegedly refused to give it to another employee and used a profanity to describe the applicant. He got the cheque, which was \$10 dollars less than it should have been, but when he asked Scherk about his earlier comment he repeated the profanity a number of times, along with some others, told the applicant to leave him alone, and accused him of trying to cause the union trouble. Following this episode, the applicant complained to the local president, who said that she would speak to the steward. The discrepancy in the amount of the cheque was quickly remedied. While the applicant doesn't know whether or not the local president spoke to Scherk, Scherk has not engaged in similar verbal harassment since that occasion. Indeed, the applicant and Scherk do not speak to each other.

When each of these incidents occurred, the applicant filed correspondence in Board file 2984-95-U describing the incidents, complaining of the alleged harassment by the union, and asking that the Board deal with these new allegations in the context of the section 74 complaint. As noted above, the Board ultimately found that it had no jurisdiction to deal with the complaint relating to section 74. However, it is not clear from a reading of that decision whether or not the Board specifically considered the allegations made by the applicant relating to Scherk's conduct in April 1995 through March 1996 in dismissing the complaint, although it is clear that these allegations were before it.

For the purpose of considering the union's preliminary objections, I will presume that the facts alleged by the applicant are true and provable. Having carefully considered the written and oral submissions made by the parties, I have concluded that even if the facts outlined above and in the application are proven through the calling of evidence, the Board would not grant the remedies requested by the applicant. While the allegations concerning the conduct of Scherk are obviously of great concern to the applicant, they do not constitute conduct which clearly falls within the intended parameter of section 87(2), and which would therefore justify an intervention by the Board. While Scherk clearly felt himself aggrieved by the filing of the earlier complaint and made that clear to the applicant, he did not threaten the applicant or attempt to dissuade him from proceeding, and was not clearly in a position to carry out any threat that the applicant may have perceived to be implicit in his conduct.

Most importantly, however, the conduct came to an end, long before the hearing before the Board on the earlier matter, and almost a year ago. Whether or not the conduct ceased because of the intervention of the local president, there is nothing pleaded by the applicant which suggests that there is any reason to believe that

he requires an intervention by the Board in order to prevent further harassment by the union or its agents.

This is not to suggest that the Board will never grant a declaration pursuant to section 87(2) where the conduct complained of has ceased, but here the conduct is simply not of a nature that it appears to require Board intervention, either to prevent a repetition or, as the applicant requests, to censure the conduct "on the record".

It is clear that, other than declaratory relief, there is no further remedy that the Board might grant. The applicant seeks the removal of the union steward from the workplace, and from any workplace at which the applicant might be assigned to work, and also his removal from union office. Whether or not these are remedies which the Board has the jurisdiction to grant, they are not remedies which we are likely to grant on the facts of this case. Certainly the concern regarding Scherk's role as the union steward, which is an elected position, might be dealt with through a number of avenues within the union and with the general membership, whether or not there is a formal complaint process available through the operation of the union's constitution and by-laws. It is not clear, despite some confusion about the existence of a formal complaint process, that the applicant has ever asked the union directly to sanction the conduct of the steward (although he did make a complaint to the local president which appears to have led to some relief), which would certainly have been appropriate given that these matters are really ones relating to internal union affairs.

Finally, I am not satisfied that this complaint is entirely appropriate given the history of the earlier application. Certainly these allegations, in identical form, were before the earlier panel at the time of the hearing in July 16, and while they are not clearly the subject of the decision of August 12, 1996, neither is it clear that they were not considered prior to the Board deciding to dismiss the complaint. If the applicant felt when the decision was released that the Board had failed to deal with a part of his complaint, then he had a clear remedy available to him pursuant to section 114(1) of the Act. Having failed to apply for reconsideration, it is not open to him to now attempt to revive a part of the earlier application in the guise of a new complaint under a different section of the Act.

For all of these reasons, I have decided to exercise my discretion not to inquire into this complaint further. The application is therefore dismissed.

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**1912-96-R; 2077-96-U** United Food and Commercial Workers International Union, Local 175, Applicant v. **Kraft Canada Inc.**, Responding Party; United Food and Commercial Workers International Union, Local 175 & 633, Applicant v. **Kraft Canada Inc.**, Responding Party

**Certification - Change in Working Conditions - Representation Vote - Unfair Labour Practice - Union alleging that video tape and letter sent by employer to each employee's home on eve of representation vote contained material misrepresentations regarding statutory freeze and threats to employment - Union asking that second vote be ordered - Board rejecting union's allegations - Application for certification and unfair labour practice complaints dismissed**

**BEFORE:** *Gail Misra*, Vice-Chair, and Board Members *J. A. Ronson* and *H. Peacock*.

**APPEARANCES:** *John L. Stout*, *Sherry Picciottoli*, *Richard Wauhkonen* and *Kevin Dowling* for the applicant; *F. G. Hamilton* for the responding party.

**DECISION OF THE BOARD;** March 26, 1997

1. Board File No. 2077-96-U is an application filed under section 96 of the Labour Relations Act, 1995 wherein the union claims violations of various sections of the Act. Prior to the commencement of the hearing the applicant (the “union”) indicated to the responding party (the “employer” or “Kraft”) that it was no longer relying on all of the allegations and pleadings made in its original application, but was only pursuing paragraph 18 of its application which states as follows:

18. On the evening of October 7, 1996 the Respondent distributed, again via courier to each employees [sic] home address, another letter and a video tape which contained blatant, [sic] inaccuracies regarding the provisions of the Act. Specifically, the Respondent's representative misrepresented the provisions found at s. 86 of the Act. (see Schedule “F” attached hereto).

2. It is the union's position that the video and accompanying letter distributed by the employer to all of the Kraft employees who were eligible to vote in the representation vote held on October 9, 1996, contained a material misrepresentation, was propaganda, and was distributed at the last possible moment so that the union had no time to respond to it. It is alleged that the content of the video and the letter created an issue for employees which had not hitherto been a concern. The union is seeking as a remedy a second vote, along with other remedies, on the basis that the video and letter deprived employees of the opportunity to freely express their true wishes on October 9, 1996.

3. The employer urged the Board not to hear any evidence about what employees may have thought as a result of receiving the video and letter as to do so the Board would have to hear from all of the employees. It contended that eight of the videos did not have sound, and no one knows how many employees did not even view the video. It is argued that the Board, after viewing the videotape, can decide what a reasonable voter would have thought had s/he viewed the video and read the letter. In any event, the employer argued that the union had also sent out misleading communications to the employees and had itself given a characterization of section 86 of the Act which was much like that given by Kraft in its letter and video.

4. The Board determined it would view the video but would not hear evidence from the union's witnesses about what they believed as a result of their particular viewing of the video. The Board was provided with the text to the video presentation and screened the video. The letter which had been sent to employees with the video was largely the same as what Mr. Wagdi Henein said on the video. Mr. Henein is the Director of Manufacturing for the Scarborough and Cobourg plants of Kraft. The letter was signed by Mr. Henein; Lionel Domerchie, the Plant Manager for Scarborough; Fred Marcon, the Human Resources Manager; and Gary Dunn, the Associate Manager of Human Resources. The letter states as follows:

October 8, 1996

TO: THE SCARBOROUGH TEAM

As you all know, the labour board has now scheduled the vote for this Wednesday. This vote will determine your future state as union or non-union employees. We would like to take this opportunity to speak to you before you make your decision and to talk about the importance of making an informed choice.

Before you cast your ballot, we urge you to think about the issues once again. Remember, Unions are in the business of getting new members. In selling their organization they are free to make any



promise they wish, whether they can realistically achieve it or not. Unions may promise more money and better benefits. The reality is that everything is subject to negotiations, which might last for more than 12 months. During that time, the law states that we may not change "the rates of wages or any other term or condition of employment or any right privilege or duty..."

We urge you to remember what we have achieved so far at Scarborough. Over the last five years our plant has continued to thrive and maintain a leading position versus internal and external competitors. Because we are competitive, that has led to growth and plantwide investment. We need to stay competitive.

Kraft follows a policy that an employee who is efficient and productive and who respects the rules of conduct of the Company will keep his/her employment with or without a union. The profitability of the Company depends on your own productivity and that of your colleagues which represents your real security of employment.

Kraft prefers that employees in its plant not be unionized. This is because we prefer to work directly with our employees rather than through a third party. We care about you and we prefer to interact with you on a 1-to-1 basis.

Ultimately, the decision is yours to make. We respect that it is an individual one and we urge you to weigh all of the facts.

5. One of the portions of the presentation and letter which the union is most concerned about is the following:

"The reality is that everything is subject to negotiations, which might last for more than 12 months. During that time, the law states that we may not change "the rates of wages or any other term or condition of employment or any right privilege or duty..."

It is the union's belief that the employer was misrepresenting section 86 of the Act in this statement as the Board has said that this section allows for "business as usual" and the fulfilling of the "reasonable expectations" of the employees while negotiations continue. It is the union's contention that it would have agreed to the employer granting pay increases which may have usually flowed to employees, but that by saying this the employer was intimating that there would be no normal increases until the end of bargaining, which may take more than a year. The union claims the employer should have cited the whole of section 86 so that employees would have understood what the section allowed, or alternatively, should have mentioned the section number so that employees could find out for themselves what it said.

6. Claiming that the union made similar references to section 86 as had been made by the employer, Kraft relies on the union's October 7, 1996 letter to Kraft employees in which it stated as follows:

...Current wages, working conditions and benefits are PROTECTED BY LAW under s. 86 of the Ontario Labour Relations Act. The Company can not take anything away BY LAW.

7. The union also takes umbrage at the third paragraph of the employer's letter, claiming the sub-text therein is that being competitive is to be equated with having no union and that further investment in the Scarborough plant is going to be compromised if the employees vote for a union.

8. The union argues that since the outcome of the vote was so close (28 against, 27 for, one segregated and not to be counted), if the Board believes that even one person may have been swayed by the video and letter then it should order a second vote.

9. The employer relies on all of its correspondence to the employees of Kraft for the proposition that it made clear throughout the campaign that it would respect the decision of the employees to have

a union should that be the result. Kraft has an Employee Relations Philosophy with respect to third party representation which was cited in the employer's letter to employees of August 21, 1996, and states as follows:

#### THIRD PARTY REPRESENTATION

It is our belief that the consistent application of the principles of the KCI Employee Relations Philosophy should make it unnecessary for the employees to turn to a third party. However, each employee has the right to join and support a union and also the right to refrain from such activity. We believe that, in our current union-free operations, it is in the best interest of our employees and the company to maintain that status. In those where there is third party representation, we accept the concept of collective bargaining and will deal with an employee representative in a direct and straightforward manner.

In either case, the primary determinant of a positive work environment will continue to be how well the Employee Relations Philosophy is applied throughout the organization.

10. The employer sent letters to the employees dated August 21, 1996; September 13, 1996; October 4, 1996; and October 8, 1996. It is only the last letter sent by Kraft that the union is challenging. All of the letters make some reference to the fact that Kraft has been able to achieve a good product at competitive pricing. The October 4th. letter also refers to the investment in the Scarborough plant. However, the union did not make claims of violations of the Act with respect to any of the letters other than the October 8th. letter.

#### DECISION

11. The union's argument is premised on section 86 of the Labour Relations Act, 1995. The relevant portions of section 86 of the Act state as follows:

**86.** (1) Where notice has been given under section 16 or section 59 and no collective agreement is in operation, no employer shall, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty, of the employer, the trade union or the employees, and no trade union shall, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees,

- (a) until the Minister has appointed a conciliation officer or a mediator under this Act, and,
  - (i) seven days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator, or
  - (ii) 14 days have elapsed after the Minister has released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board,

as the case may be; or

- (b) until the right of the trade union to represent the employees has been terminated, whichever occurs first.

(2) Where a trade union has applied for certification and notice thereof from the Board has been received by the employer, the employer shall not, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer or the employees until,

- (a) the trade union has given notice under section 16, in which case subsection (1) applies; or

- (b) the application for certification by the trade union is dismissed or terminated by the Board or withdrawn by the trade union.

12. While the Board has recognized the role of propaganda and electioneering in a campaign, it has also consistently indicated that intimidation, coercion or undue influence are not permissible. A party which impugns the results of a vote held under the Act bears the onus of stating and proving its case, as the Board will not engage in or permit a fishing expedition in this respect. (See *Citipark Inc.*, [1996] OLRB Rep. June 367.)

13. In *McMaster University*, [1979] OLRB Rep. July 685, the Board outlined its role in the monitoring of campaigns as follows:

11. The Board, in general, does not consider that it should monitor campaigns preceding a representation election which are designed to persuade members of the voting constituency to exercise their franchise one way or another. It is fundamental to our society that proponents of varying views will each put forward the most persuasive arguments in favor of their position and that the electorate is competent to evaluate and decide. Despite its general position, the Board does not close its eyes entirely to the conduct of the campaign if, in its judgment the campaign has been so waged by one party to preclude the other party from a meaningful opportunity to reply and thus to impair the employees' freedom of choice and thereby call into question the weight to be accorded to the results. It is not every unanswerable claim which will cause the Board to intervene. However, in those instances in which a claim is made, which is in fact false and which relates to a significant factor which would be involved in the voter's final evaluation of the issue on which he is voting, and which the other party has not had adequate opportunity to dispute, the Board will act by ordering a new representation vote. See *Joseph Gould and Sons Limited* 52 CLLC Para. 17,039.

14. On the evidence before the Board it is clear that during the campaign leading up to the vote on October 9, 1996, both the union and the employer relied on what is commonly called the "statutory freeze" provisions of the Act. The union told the employees that "current wages, working conditions and benefits" were protected by law under the aegis of section 86, and that in these areas the employer could not take anything away from employees. The employer told employees that during negotiations it was prevented by law from changing wage rates, benefits or any other condition of employment.

15. While each of the parties had given its statement the nuance it wanted, neither gave the full text of section 86, and neither informed the employees of the union's ability to consent to changes being made to the alteration of wage rates or to any other term or condition of employment. Both told employees that current wage rates and working conditions could not be changed. While this may not encapsulate the entirety of section 86, it is nonetheless correct to the extent it goes in describing the "statutory freeze".

16. In these circumstances it is difficult to characterize the employer's statement regarding the statutory freeze as a material misrepresentation of the legislation. It may be, as was the union's statement, an incomplete recitation of the section. However, the Board has been careful not to police what is said during certification campaigns too strenuously and does not consider the truth or falsity of campaign literature and speeches unless the ability of the employees to evaluate such literature or speeches is impaired to the extent that their freedom to express their desires cannot be determined by a secret vote (see *Stauffer-Dobbie Manufacturing Co. Ltd.*, 59 CLLC Para. 18,147). Short of material misrepresentation and threatening and coercive statements, there is some allowance made during an organizing drive for salesmanship by both the employer and the prospective union. Recognition of this reality has led the Board in the past to allow for some puffery and overstatement in electioneering.

17. The Board has generally taken the view that absent occurrences of so serious and pervasive a nature as to render improbable a reliable expression of employee wishes, it will not lightly order a second representation vote (see *Concorde Metal Stampings*, [1987] OLRB Rep. Jan. 34). The Board



a union should that be the result. Kraft has an Employee Relations Philosophy with respect to third party representation which was cited in the employer's letter to employees of August 21, 1996, and states as follows:

#### THIRD PARTY REPRESENTATION

It is our belief that the consistent application of the principles of the KCI Employee Relations Philosophy should make it unnecessary for the employees to turn to a third party. However, each employee has the right to join and support a union and also the right to refrain from such activity. We believe that, in our current union-free operations, it is in the best interest of our employees and the company to maintain that status. In those where there is third party representation, we accept the concept of collective bargaining and will deal with an employee representative in a direct and straightforward manner.

In either case, the primary determinant of a positive work environment will continue to be how well the Employee Relations Philosophy is applied throughout the organization.

10. The employer sent letters to the employees dated August 21, 1996; September 13, 1996; October 4, 1996; and October 8, 1996. It is only the last letter sent by Kraft that the union is challenging. All of the letters make some reference to the fact that Kraft has been able to achieve a good product at competitive pricing. The October 4th. letter also refers to the investment in the Scarborough plant. However, the union did not make claims of violations of the Act with respect to any of the letters other than the October 8th. letter.

#### DECISION

11. The union's argument is premised on section 86 of the Labour Relations Act, 1995. The relevant portions of section 86 of the Act state as follows:

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- (a) until the Minister has appointed a conciliation officer or a mediator under this Act, and,
  - (i) seven days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator, or
  - (ii) 14 days have elapsed after the Minister has released to the parties a notice that he or she does not consider it advisable to appoint a conciliation board,

as the case may be; or

- (b) until the right of the trade union to represent the employees has been terminated, whichever occurs first.

(2) Where a trade union has applied for certification and notice thereof from the Board has been received by the employer, the employer shall not, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer or the employees until,

- (a) the trade union has given notice under section 16, in which case subsection (1) applies; or

- (b) the application for certification by the trade union is dismissed or terminated by the Board or withdrawn by the trade union.

12. While the Board has recognized the role of propaganda and electioneering in a campaign, it has also consistently indicated that intimidation, coercion or undue influence are not permissible. A party which impugns the results of a vote held under the Act bears the onus of stating and proving its case, as the Board will not engage in or permit a fishing expedition in this respect. (See *Citipark Inc.*, [1996] OLRB Rep. June 367.)

13. In *McMaster University*, [1979] OLRB Rep. July 685, the Board outlined its role in the monitoring of campaigns as follows:

11. The Board, in general, does not consider that it should monitor campaigns preceding a representation election which are designed to persuade members of the voting constituency to exercise their franchise one way or another. It is fundamental to our society that proponents of varying views will each put forward the most persuasive arguments in favor of their position and that the electorate is competent to evaluate and decide. Despite its general position, the Board does not close its eyes entirely to the conduct of the campaign if, in its judgment the campaign has been so waged by one party to preclude the other party from a meaningful opportunity to reply and thus to impair the employees' freedom of choice and thereby call into question the weight to be accorded to the results. It is not every unanswerable claim which will cause the Board to intervene. However, in those instances in which a claim is made, which is in fact false and which relates to a significant factor which would be involved in the voter's final evaluation of the issue on which he is voting, and which the other party has not had adequate opportunity to dispute, the Board will act by ordering a new representation vote. See *Joseph Gould and Sons Limited* 52 CLLC Para. 17,039.

14. On the evidence before the Board it is clear that during the campaign leading up to the vote on October 9, 1996, both the union and the employer relied on what is commonly called the "statutory freeze" provisions of the Act. The union told the employees that "current wages, working conditions and benefits" were protected by law under the aegis of section 86, and that in these areas the employer could not take anything away from employees. The employer told employees that during negotiations it was prevented by law from changing wage rates, benefits or any other condition of employment.

15. While each of the parties had given its statement the nuance it wanted, neither gave the full text of section 86, and neither informed the employees of the union's ability to consent to changes being made to the alteration of wage rates or to any other term or condition of employment. Both told employees that current wage rates and working conditions could not be changed. While this may not encapsulate the entirety of section 86, it is nonetheless correct to the extent it goes in describing the "statutory freeze".

16. In these circumstances it is difficult to characterize the employer's statement regarding the statutory freeze as a material misrepresentation of the legislation. It may be, as was the union's statement, an incomplete recitation of the section. However, the Board has been careful not to police what is said during certification campaigns too strenuously and does not consider the truth or falsity of campaign literature and speeches unless the ability of the employees to evaluate such literature or speeches is impaired to the extent that their freedom to express their desires cannot be determined by a secret vote (see *Stauffer-Dobbie Manufacturing Co. Ltd.*, 59 CLLC Para. 18,147). Short of material misrepresentation and threatening and coercive statements, there is some allowance made during an organizing drive for salesmanship by both the employer and the prospective union. Recognition of this reality has led the Board in the past to allow for some puffery and overstatement in electioneering.

17. The Board has generally taken the view that absent occurrences of so serious and pervasive a nature as to render improbable a reliable expression of employee wishes, it will not lightly order a second representation vote (see *Concorde Metal Stampings*, [1987] OLRB Rep. Jan. 34). The Board

relies on its belief that the average employee is a reasonable and sensible person capable of deciding what is in his or her best interests. As in other electoral processes, voters must be presumed capable of assessing critically the conflicting arguments presented by various parties which are competing for their votes. As the Board noted in *Northfield Metal Products Ltd.*, [1989] OLRB Rep. Jan. 57:

3. ... The test is not based on the most gullible or the most firm voter, but the reasonable voter who is possessed of critical faculties and the ability to assess issues and inquire on his or her own behalf.

18. We therefore do not accept the union's contention that even if the Board believes that one voter was swayed by the videotape and letter sent by the employer, that we should therefore order a second vote. To do as the union suggests would be to set the standard at that of the most gullible voter, and the Board is of the view that is not practical. We are satisfied that there was no material misrepresentation with respect to section 86 in the videotape and letter sent by Kraft to its employees on the day before the vote. Even though the union claims that by sending out these packages to employees just before the vote the employer circumvented the union from responding, we are satisfied that the employer was not telling the employees anything the union had not already said about the statutory freeze. In all of these circumstances, the Board finds no violation of the Act in the action of Kraft.

19. The Board also finds no violation of the Act in the wording of the third paragraph of the Kraft letter to employees dated October 8, 1996, as it was within the permissible limits of employer speech during an organizing campaign. We are of the view that the paragraph in question says what the text clearly outlines: That the Scarborough plant has been thriving in the last five years, that it has a leading position in relation to its internal and external competitors, that this leading position has led to investment in the plant, and that the Scarborough plant needs to remain competitive. This cannot, in the context of this letter, be found to be threatening or coercive speech.

20. Having reached the conclusions outlined above, the section 96 application is hereby dismissed. The certification application was outstanding pending the determination of Board File No. 2077-96-U. As outlined earlier, less than fifty per cent of the ballots cast by employees in the bargaining unit were cast in favour of the applicant. The certification application is therefore dismissed.

21. The Board will not consider another application for certification by the applicant as the bargaining agent of the employees in the bargaining unit until one year elapses from the date of this decision.

22. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before the expiration of such 30-day period.

23. The responding party is directed to post copies of this decision immediately, adjacent to all copies of the "Notice of Vote and of Hearing" posted previously. These copies must remain posted for 30 days.

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**2397-96-G International Union of Operating Engineers, Local 793, Applicant v. Magine Contractors Inc. and/or Magine Contractors (1994) Inc., Responding Party**

**Construction Industry - Construction Industry Grievance - Sector Determination - Employer and union bound to collective agreement in residential sector of construction industry - Collective agreement requiring employer to apply ICI collective agreement for work performed in that sector - Board rejecting argument that union estopped from grieving employer's failure to pay employees weekly, rather than bi-weekly - Board finding work at two disputed sites within ambit of ICI collective agreement - Grievances alleging improper pay allowed**

**BEFORE:** *M. A. Nairn*, Vice-Chair, and Board Members *F. B. Reaume* and *G. McMenemy*.

**APPEARANCES:** *E. M. Mitchell*, *Cassian D'Ornellas* and *Vito Montagnese* for the applicant; *Andrew Marek* and *Giovanni Costa* for the responding party.

**DECISION OF M. A. NAIRN, VICE CHAIR, AND BOARD MEMBER, G. McMENEMY;** March 26, 1997

1. The applicant has referred two grievances to the Board for final and binding determination pursuant to section 133 of the Labour Relations Act, 1995 (the "Act"). The responding party (the "employer" or "Magine") raised a preliminary argument that, in a summary way, alleged that the applicant (the "union") was precluded from pursuing the grievances by reason of failing to comply with the grievance procedure in the collective agreement. It asserted that the employees ought to have brought the grievances forward, not the union, and that the grievances were out of time. The October 7, 1996 grievance refers to work being performed from September 23, 1996 and continuing. The October 9, 1996 grievance refers to work from June 1996 and continuing. The only prejudice asserted by the employer was with respect to the weekly pay issue, should it be required to comply with the terms of the collective agreement. It asserted that no employee had complained for a period of years and the employer was unaware of any concern. Counsel agreed that any issue of representation and reliance went to its position on the merits of the dispute and otherwise no prejudice was asserted in its ability to deal with the issues.

2. After hearing from the parties the panel ruled orally that there was no basis for refusing to hear the grievances in the circumstances. The union is entitled to bring grievances on behalf of the members it represents. The first grievance was timely and the union was only seeking prospective relief with respect to the payroll issue. There was some delay in the filing of the second grievance; however, in the absence of any prejudice to the employer in proceeding, it was appropriate to extend the time limits under section 48(16) of the Act to hear the grievance.

3. There was no dispute that Magine was bound to a collective agreement with the applicant (the "residential agreement") at the relevant times. It was also agreed that the residential agreement required Magine to, inter alia, apply the rates of pay and conditions of work found in the ICI Provincial Agreement for work performed in that sector.

4. The grievance filed on October 7, 1996 alleges that Magine violated the collective agreement by failing to pay ICI rates and benefits for work performed at the "Milner Ave." site. The grievance further asserts that the employer violated the collective agreement by failing to pay employees on a weekly basis as is required by the collective agreement. The employer relies on an estoppel argument. The grievance dated October 9, 1996 asserts that the employer engaged non-union personnel and/or subcontractors to perform work in the ICI sector and had failed to pay the proper rates, benefits and remittances. That grievance relates to work performed on the "Teston Rd." site. In both cases Magine

treated the work as covered by the residential agreement. At the hearing the parties were agreed that the issue of the use of non-union personnel and/or subcontractors had been resolved.

5. We will deal with the payroll issue first. There was no dispute that the collective agreement (whether the residential or the ICI agreement) required payment to employees on a weekly basis and that Magine had been paying on a bi-weekly basis. Magine relied on an estoppel principle. The applicant conceded that the Board could apply the principle of estoppel in certain appropriate cases, but argued that this was not such a case.

6. As is often the case with this kind of issue, the evidence as to the nature of the representation was not entirely satisfactory. However, Mr. Costa, the principal of Magine, testified about entering into the agreement. He told Mr. Ricutti, the union representative, that Magine paid on a bi-weekly basis and he asserted that in that conversation it was agreed Magine could continue to do so. On that basis he says, he signed the voluntary recognition agreement in 1989. In cross-examination Mr. Costa testified that he told Mr. Ricutti he had been paying bi-weekly for years and that Ricutti told him to do what he had to do. Mr. Ricutti did not testify.

7. Mr. Costa testified that John Monti and Alcino Silveira were also present but didn't know if they heard the conversation. All three union representatives were present he said when he signed the agreement. He did not read the contract before signing it. Mr. Monti and Mr. Silveira testified that they were not present when the agreement was signed. While the evidence surrounding signing the agreement is conflicting, there is some uncontradicted evidence that a union official knew of and acceded to Magine's condition for signing, notwithstanding the words in the agreement.

8. Consistent with that evidence of a representation is the evidence of conduct. Magine has paid on a bi-weekly basis since 1989. It has not received a complaint from employees or a grievance from the union. Mr. Costa agreed that after signing the agreement he told no one from the union that he was paying bi-weekly, but asserts that union officials Ricutti, Monti, and Silveira already knew. Any employees were obviously aware.

9. In addition we heard evidence from Mrs. Costa, Magine's bookkeeper. Although her evidence too was somewhat contradictory, we are satisfied that at a meeting in Magine's offices in or about 1993 (concerning an unrelated grievance), Vito Montagnese, another union representative, told Mrs. Costa that paying on a bi-weekly basis was "okay" with him so long as no one complained. Mr. Montagnese did not testify. Although the comments were qualified, it does show that the union was aware of the practice and was not going to do anything about it on its own initiative.

10. We note that Mr. Costa's evidence differs in some ways from Magine's pleadings on this issue, although not in a manner that has prejudiced the union from being able to respond. For example, the pleadings state that the union did not point out the provision in the agreement requiring weekly payment at the time of signing. Mr. Costa testified that it had in fact been explained to him by Ricutti when he signed, but that the two agreed otherwise. The pleadings refer to Ricutti and Orsini as being present at the time of signing, where Mr. Costa referred to Ricutti, Monti, and Silveira. However, Magine agreed to, and did, call its evidence first and the union was not prejudiced by any lack of particularity in the pleadings.

11. The union argued that Magine had been required to enter into the voluntary recognition agreement or be forced off a unionized site where it was performing work. However, the effect of this evidence, which is also somewhat contradictory, does not necessarily lead to a conclusion that no representation was made. Mr. Monti testified in chief that Magine was required to enter into the agreement with the union or be forced off a site involving a unionized company referred to as "Division". It was his understanding that, as a result, Magine had entered into the agreement. Mr.



Silveira also testified that the union came across Magine not as a result of any organizing efforts but as a result of finding it on a job site contracted to Division. He stated he was not involved in the signing of the agreement; that it was passed to more senior business agents although he later knew that an agreement was in place.

12. Mr. Costa stated that he did not have to “go union” in 1989. In cross-examination he recalled a job site at Rutherford and Islington Avenues but claimed the work was in 1987. That timing was essentially unchallenged. Mr. Costa believed the contractor was Division but stated he did not know if it was unionized. He testified that Magine had finished the work on the site, that he had been to the Board but the case had been dismissed. We received no supporting documentation from either party concerning any of this evidence. We were also not provided with the recognition agreement in order to clarify the date it was reached, which date would have tended to support one or other of the parties’ evidence. There is no apparent reason to completely discount Mr. Costa’s uncontradicted evidence of a representation having been made to him at the time of entering the agreement. That would also be the case even had Magine been under some pressure to enter an agreement. That representation is consistent with and confirmed by the union’s subsequent conduct in allowing the open and known practice to continue without complaint.

13. Magine has had the benefit of the union’s inaction for a period of some seven years. Has it relied on the representation to its detriment? Magine is not a member of any contractors’ association and does not participate in any negotiations of either the residential or the ICI collective agreement and has not, the union argues, lost any negotiating opportunity. Magine asserts that a prejudice arises by now losing the opportunity to pay on a bi-weekly basis. There is a real advantage to an employer to pay bi-weekly as it helps the employer maintain its cash flow in circumstances where it often must wait for longer periods to receive money owing to it. It also provides an employer with a competitive advantage (which varies depending on the size of the contractor) over other contractors who pay weekly.

14. We are not persuaded that having to comply with the clear words of a contract (and losing an ongoing opportunity to pay on a bi-weekly basis) constitutes the kind of prejudice contemplated by an estoppel. The prejudice comes from being unable to negotiate a change to the express words of the contract to conform to the developed practice. An estoppel recognizes that it would be unfair to require compliance with the legal rights or obligations contained in the collective agreement where the other party has represented that those legal rights or obligations will not be insisted upon. In collective bargaining, negotiations can only occur at certain times and an estoppel acts to prevent a party from seeking compliance with the clear words of the agreement until after the parties have had an opportunity to negotiate. Magine has had the benefit of being exempted from the clear terms of the collective agreement. The union is not seeking any retroactive relief. As acknowledged at the hearing, the issue raised here is “when” must Magine start paying on a weekly basis. Magine did not seriously dispute that it lost no negotiating opportunity. Nor did it rely on the loss of any opportunity to negotiate. It is the loss of that opportunity that founds the prejudice, because, as already noted, it contemplates that a party may be able to change the terms of the agreement through negotiations to conform to the practice. In addition, in 1993, any earlier representation was qualified, which put Magine on notice that the union would pursue a grievance if someone complained. In the context of these construction industry relationships such a complaint could come from a competing employer subject to the same collective agreement terms, in addition to any employee.

15. We are not persuaded that Magine has relied on the representation and the union’s conduct to its detriment in the particular circumstances here. No estoppel has been established. Magine is therefore directed to comply with the clear terms of the collective agreement by paying employees covered by the terms of the collective agreement on a weekly, rather than bi-weekly basis. In order to



facilitate that changeover we direct that the change be implemented no later than one month from the date of this decision.

16. We now turn to the issue of the nature of the work at the two sites in dispute. Magine asserted that the work at the Teston Road site was properly performed pursuant to the terms of the residential agreement. It asserted that as there was no specific use for the site the employer was free to review the essence of the duties involved and assign the work accordingly. We reject the employer's position in this regard. The employer, in part, relied on arbitration awards arising out of disputes over employee classifications under a collective agreement. The primary issue here is not the classification of employees but which collective agreement applies. That issue depends on the characterization of the work. The particular skill set required by an employee to perform work is of only very limited relevance to this determination. In the construction industry, a journeyman will have a certain skill level that will be utilized in varying ways depending on the work, regardless of the sector of the construction industry that the work falls. Contrary to the assertion by Magine, higher rates of pay in the ICI sector have little if anything to do with the particular skills required or utilized. Those rates reflect the market demands of that work.

17. In any event the use of the site is clear. It is an inactive landfill. The extract from the City of Vaughan Council meeting minutes sets out the tender for the Teston Road site as landfill remediation work and landfill final cover placement. The site required remediation work due to the presence of migrating methane gas and an inadequate final cover. The bid for tenders describes the work as:

site preparation, grading, constructing sewers, importing and placing the final cover including  
soiling and seeding of the former Vaughan Landfill...

18. The sewer work was apparently sub-contracted. The employer's suggestion that the land use might change and be used as residential in the (distant) future is of no assistance in determining which agreement applies, particularly in the face of section 46 of the Environmental Protection Act which prohibits use of the land for a period of twenty-five years except with approval of the Minister. On Magine's analysis the land might be available for a variety of other uses as well. There is, in our view, no basis on which to suggest the work is covered by the terms of the residential agreement. The parties argued this issue on the basis that it was either residential or ICI work, without the benefit of pleadings and material as would be required by a sector determination. We have no doubt that the work is not properly described as residential. We are therefore satisfied for the purposes of this grievance that the work is covered by the terms of the ICI collective agreement. The union's grievance succeeds in respect of the Teston Road site.

19. The use of the Milner Road site is equally well set out by the documentary evidence. The land is adjacent to a multi-family residential development. However, it is part of a site plan control area and its use has been designated by by-law as "IR". That designation refers to "Institutional - private and public recreational uses". The plan also designates the alternative use of the land as institutional, specifically, a school.

20. Magine argued that the site was part of the residential development in the area. Although Magine performed clean up work on both sides of Progress Avenue, it was not involved in any way in excavation work for the residential site. It did not produce any contracts for any of the work. The work performed on the site in issue was clean up and some very limited rough grading. The fact that no park has as yet been built is of little relevance, as is the fact that the site control plan could be amended by the responsible authority authorizing a different use. Again, the existence of those designations acts to limit the use. We are satisfied that the work properly falls within the ambit of the ICI collective agreement and the union's grievance succeeds in respect of the Milner Rd. site.

21. In summary, the union's grievances succeed. In addition to the direction set out in paragraph 15 of this decision, Magine is directed to pay damages to the applicant trade union as a result of its failure to apply the terms of the ICI collective agreement. The calculation of those damages is remitted to the parties. The Board will remain seized should the parties be unable to settle those amounts.

**DECISION OF BOARD MEMBER F. B. REAUME;** March 26, 1997

1. While I concur with the decision in paragraph 15 with regard to weekly pay, I cannot concur with the sector determination decisions that follow.

2. Since the earth moving work at both locations, Teston Road and Milner Road, is clearly not currently for the purpose of I.C.I. construction work (i.e. a school or community recreational building) nor any construction work to be performed in the immediate future, I am unable to conclude that this earth moving work properly falls in the I.C.I. sector or any other sector of the construction industry at this time.

3. Construction work can and should only be sectorialized in conjunction with a specific tender, purchase order or contract to construct something in the immediate future. When such construction falls in the I.C.I. sector as to use, then and only then does the work performed on the project fall under the I.C.I. agreements. There can be no sector determination until the project is proceeding with a specific use.

4. Site plans can be and often are ultimately changed or modified. Plans cannot and should not be relied upon for sector determination of any work on a given site before the planned use or revisions become reality (i.e. ready to specifically proceed).

5. Indeed, it is questionable if the work that was performed in the instant cases meets the definition of "construction" as found in section 1 of the Act. In order to sectorialize any construction work properly, the use and nature of the project must be determined.

6. I, therefore, am obliged to dissent on the two decisions of the majority with regard to sector determination.

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**0009-97-R** The Canadian Union of Operating Engineers and General Workers, Applicant v. **Pet-Pak Containers**, Responding Party

**Build-Up - Certification - Representation Vote - Employer's response to certification application asserting that workforce about to increase and that representation vote should be postponed - Board directing taking of representation vote and indicating that "build-up" issue may be raised by employer at hearing after vote if necessary**

**BEFORE:** *Laura Trachuk*, Vice-Chair

**DECISION OF THE BOARD;** April 4, 1997

1. This is an application for certification.

2. The Board finds that the applicant is a trade union within the meaning of section 1(1) of the Labour Relations Act, 1995.

3. It appears to the Board on an examination of the evidence before it, that not less than forty per cent of the individuals in the bargaining unit proposed in the application for certification were members of the union at the time the application was made.

4. The Board directs that a representation vote be taken of the individuals in the following voting constituency:

all employees of Pet-Pak Containers in the Regional Municipality of Peel, save and except supervisors, persons above the rank of supervisor, office and clerical staff.

5. The vote will be held on April 8, 1997. Other vote arrangements will be as determined by the Registrar and set out on the attached "Notice of Vote and of Hearing".

6. All individuals who had an employment relationship with the responding party in the voting constituency on April 1, 1997, the certification application filing date, are eligible to vote. Employees having an employment relationship on April 1, 1997, the certification application filing date, include employees who were not at work on that date, so long as there is a reasonable expectation of their return to employment.

7. The responding party alleges that its workforce will increase by a further 72 employees by the end of May and claims that it is therefore not appropriate to hold a vote at this time. The Board considers it appropriate to hold a vote at this time. The Board considers it appropriate to hold a vote and to determine the "build-up" issue raised by the employer at the hearing after the vote. In the event that the responding party's "build-up" argument is successful, it may be necessary to hold a second vote.

8. There is also a dispute between the parties as to whether or not employees at the two locations of the responding party in the Municipality of Peel should be in the same or separate bargaining units. The ballots should therefore be collected and counted in such a way that the wishes of employees at each location may be determined separately. If there are so few employees at one of the locations that counting their ballots would reveal their wishes, the ballot boxes should be sealed until the parties agree or the Board directs that the ballots be counted.

9. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the responding party.

10. The responding party is directed to post copies of this decision and of the "Notice of Vote and of Hearing" adjacent to each of the posted copies of the "Notice to Employees of Application for Certification". These copies must remain posted for 30 days.

11. Any party or person who wishes to make representations to the Board about any issue remaining in dispute which relates to the application for certification, including any matters relating to the representation vote, must file a detailed statement of representations with the Board and deliver it to the other parties, so that it is received by the Board within seven days (excluding Saturdays, Sundays and holidays on which the Board is closed) of the date on which the vote is taken.

12. The matter is referred to the Registrar

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**2410-96-R** The People's Union, Applicant v. Commonwealth Hospitality Ltd. (c.o.b. as **Ramada Inn Windsor**), Responding Party v. Teamsters Local 847, Laundry and Linen Drivers and Industrial Workers, Intervenor

**Certification - Trade Union - Trade Union Status - Board expressing concern regarding apparent failure to elect officers and admit members in accordance with rules set out in newly adopted constitution, but finding applicant to be a "trade union" within meaning of the Act**

**BEFORE:** *M. A. Nairn*, Vice-Chair.

**APPEARANCES:** *Marion Wenzel* and *Shirley LaPointe* for the applicant; *Melina M. Nathanail* and *Grant Clark* for the responding party; *Sheri Price*, *Gil Davis* and *Joelle Spadacini* for the intervenor.

**DECISION OF THE BOARD;** March 4, 1997

1. This is an application for certification. The applicant is seeking to displace the intervenor as bargaining agent for a bargaining unit of employees of the responding party. The applicant has not established its status as a trade union before the Board in any prior proceeding. The parties had agreed that the issue of status could be dealt with based on written documents and representations filed. By decision dated December 18, 1996 the Board advised the parties that it was not prepared to make a decision based on that written material, and set the matter down for hearing. A hearing was held. This decision deals only with that issue.

2. The decision to form a new union was taken in response to dissatisfaction with the quality of representation being provided by the intervenor to the members of the bargaining unit at issue. The six stewards of the intervenor met in response to employee concerns and discussed possible options. For a variety of reasons they decided that the formation of a new, independent union would best serve the interests of the employees.

3. At a meeting of the six stewards on October 22, 1996, they discussed these issues and having determined that course of action, also determined the officers of the new organization. Each of the six was assigned a position within the contemplated new organization. Ms. Wenzel was assigned the role of President. Ms. LaPointe was assigned the role of Treasurer. Both testified in these proceedings.

4. From information obtained, five of the six met again on October 25, 1996 to draft a constitution for what became known as The People's Union. There was no dispute that the document reflected the appropriate requirements of a constitution, including objectives, membership requirements, officers, voting procedures and the like.

5. A meeting of the employees in the existing bargaining unit was arranged for October 28, 1996. Notice was provided by the six stewards telephoning the employees within their area. Ms. Wenzel chaired the meeting. No one was required to sign in and no attendance was taken. At the outset Ms. Wenzel reviewed some of the concerns regarding the intervenor's representation and some of the options considered by the steward group. She then presented the constitution to the group of employees. Copies were not handed out to each person, although some copies were made available at the front of the room. Ms. Wenzel reviewed the provisions of the constitution by reading them aloud and asking if there were any questions.

6. It appears that most, if not all the questions were directed at workplace concerns and how conditions of employment might be affected were this option to be followed. There were concerns expressed as to whether the benefit package would continue, in that, although not entirely clear from

the evidence, it appears that certain of the benefits are provided through plans operated by the intervenor. Assurances were given that benefits would continue. Ms. Wenzel asked for the group's trust, because in her view, they were part of the group; each of the six had as much at stake as any other employee and would not act to hurt themselves.

7. At the point of reviewing Article IV of the constitution, concerning the duties of the officers, Ms. Wenzel named the six persons and the office they held. At the conclusion of her review of the document, Ms. Wenzel asked for a motion to approve the constitution. A motion was received and seconded. A show of hands in favour of adopting the constitution was requested. It appears that a majority of the persons present raised their hands. Although Ms. Wenzel testified that the result was unanimous and the document purporting to constitute minutes of the meeting also so states, Ms. Wenzel agreed that no count was taken. No count of those opposing or abstaining was sought. At the hearing Ms. Wenzel agreed it was possible that the vote was not unanimous. Mr. Knight, on behalf of the intervenor, testified he abstained from voting.

8. Ms. Wenzel then proceeded to introduce the six officers whom she had previously named. According to Ms. Wenzel and Ms. LaPointe, after the introductions Ms. Wenzel asked if anyone had any objections and none were received. Ms. Wenzel testified she then asked for another motion, which was seconded, and for a show of hands accepting the officers. She again testified it was unanimous although no count was taken, and no request for those opposed or abstaining was made. Ms. Wenzel acknowledged that this was not in keeping with the provisions of the constitution for the election of officers, but asserted that it was substantial compliance. The document submitted to the Board as representing the minutes of that meeting do not reflect any request for objections or any taking of a vote. It merely notes that the "chosen officers... were introduced to the members". Mr. Knight could recall only one show of hands at the meeting.

9. The document filed purporting to be minutes of the October 28, 1996 meeting, was prepared by Ms. Eugenio, the Secretary of the applicant for the purpose of determining the status issue. Ms. Wenzel indicated that Ms. Eugenio had handwritten notes of the meeting and it appeared that Ms. Wenzel had them with her at the hearing. Ms. Eugenio was not present to testify and the notes were not introduced. Ms. Wenzel testified that she viewed the minutes as accurate but incomplete, and she had not notified the Board or the other parties of any deficiency until testifying. Ms. Wenzel's own evidence about the election of officers in cross-examination was at times contradictory and on her initial review of the events, she failed to mention any second "vote" but only raised it when pressed. Overall, given Mr. Knight's evidence and the failure of the minutes to reflect any such second vote I am not persuaded that it occurred.

10. Shortly after the introduction of the officers, the meeting adjourned. Persons attending the meeting were asked to sign membership cards in The People's Union. The six officers sat at the front of the room and individuals lined up in order to sign if they chose. It was not disputed that a number of persons who participated in the meeting did not sign membership cards. It was also not in dispute that no one was asked to pay any membership fee to the organization, notwithstanding that the constitution provided for a \$5.00 membership fee. No dues have been collected from anyone, again notwithstanding the constitution which provides for dues of \$5.00 per pay period for members employed on a full-time basis.

11. Ms. Wenzel testified that the organization did not intend to collect any monies from anyone until such time as it was certified. She also stated that the members knew they were still members of the intervenor and that the applicant was not a union until so recognized by the Board.

12. The applicant relied on the Board's decision in *Caterair Chateau Canada Limited*, [1994] OLRB Rep. Apr. 365. Ms. Wenzel and Ms. LaPointe had attended at the University of Windsor Law

Library prior to the October 28, 1996 meeting and, with the help of staff, located this and other Board decisions. In the applicant's view, its conduct, in the words of that decision, was in "substantial compliance" with its constitution. The applicant argued that it had met the Board's standard for proving status.

13. The Labour Relations Act, 1995 (the "Act") defines a trade union as:

"trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national, or international trade union, a certified council of trade unions and a designated or certified employee bargaining agency.

In this case, the constitution includes the required purpose to regulate relations between employers and employees. The issue is whether the applicant is "an organization of employees ...".

14. The applicant in *Caterair*, *supra*, was found to be a "trade union". In that decision the Board stated:

8. While the "five step" procedure set out by the Board in *U.A.W. Building Corporation*, *supra*, remains a useful guideline both for the Board in determining the status of a trade union under the Act and for persons wishing to form a trade union, the Board has made it clear that that procedure is not the exclusive manner of establishing a trade union. (See, for example, *Service Employees International Union*, [1991] OLRB Rep. Feb. 267; *Local 199 U.A.W. Building Corporation*, *supra*.) As counsel for the applicant points out, in circumstances where the formation of the trade union has transpired at a single meeting, the Board has not required a strict adherence to the sequence of steps. (*Proctor-Lewytt*, [1969] OLRB Rep. Sept. 760.) Moreover, although the procedure contemplated by the "five steps" is for members to signify their intention to be bound by the provisions of a constitution in a process of formal application to membership followed by ratification, the Board has found other procedures to be sufficient evidence of the formation of the organization. Thus the Board has found that it is sufficient evidence of the organization's formation and ratification of its constitution where the purported members of the union were named in the constitution and then subsequently signed the constitution agreeing to be bound by its terms. (*Comco Metal and Plastic Industries Ltd.*, [1979] OLRB Rep. June 498.) Similarly, while the Board has stressed the importance of the organization seeking trade union status having an identifiable set of officers as an indication of its viability (see *Service Employees Union*, *supra*), nevertheless the Board has accepted as sufficient the election of a temporary committee, even in the absence of a provision in the constitution contemplating such committee. (*Gold Crest Products Ltd.*, [1973] OLRB Rep. Aug. 436) More generally, the Board is interested in the substantial, rather than technical, compliance with the procedural steps involved in the formation of the trade union, since the purpose of its inquiry is not so much in ensuring that the precise requirements of the constitution are followed rather than ascertaining that the organization seeking trade union status is a viable one for the purpose of carrying out its obligations under the Act.

9. Although the procedure adopted by the present applicant was not one that most clearly expressed the purposes of the participants, when the evidence is considered as a whole, the Board is satisfied that the actions taken at the January 16, 1994 organizational meeting were sufficient so as to create an organization, to admit its members, and to approve its constitution. In reaching this conclusion, the Board has paid particular attention to the manifest intention of the participants, which was to create a trade union for the purpose of this application. In this respect, the Board notes that the employees attending the meeting expressly stated this to be their purpose and then unequivocally approved a constitution document in a procedure marked by a relatively high level of formality. The Board notes that the employees amended the constitution so as to be effective as of the date of their meeting, and then initialled such amendment. From these actions we infer an intention on the part of those present to be bound by the provisions of the constitution.

• • •



12. It is important to note that the Board is far less concerned with the minute issues of constitutionality of the actions of an organization seeking trade union status than with determining its organizational viability and its ability to carry out the statutory obligations placed upon trade unions by the Act. In this respect, the Board is concerned with the constitution only as evidence of the existence of a viable organization and, therefore whether it is a trade union under the Act. (Re C.S.A.O. National (Inc.) and Oakville Trafalgar Memorial Hospital Association, [1972] O.R. (2d) 498.) ...

15. The decision in *Caterair*, supra relies on the earlier decision in *Gold Crest Products Limited*, [1973] OLRB Rep. August 436. In that case the Board found:

4. The Board is primarily concerned with the constitution as a source of evidence of the existence of a viable organization and of evidence of the purpose and intent of the organization concerned so that the Board may be able to answer the question "Is the applicant a trade union as defined by the Act?" (Re C.A.S.O. National (Inc.) and Oakville Trafalgar Memorial Hospital Association, 1972 O.R. Vol. 2, 498)". Inquiries made as to the election of officers are made with a view only to aiding in the decision as to whether the organization is viable. In the present case, there is an arguable point as to whether the appointment of the temporary committee lies within the constitutional powers of what must be said to be a general meeting of the membership. It is quite clear, however, that the temporary committee is actively engaged in the activities of the organization carried on to date. The matter of the constitutionality of its appointment and actions is one of internal organization of concern to the membership, none of whom, insofar as the Board was advised, have challenged the propriety of the action.

16. In *Caterair*, supra, the acclamation of officers was accomplished through persons who all became members in the organization. Although the issue of membership was dealt with after the adoption of the constitution as was the case here, the Board in *Caterair*, supra, noted that "membership in the organization occur[red] virtually simultaneously and [was] performed by precisely by the same participants..." (see para. 10). That is, it was clear that the persons approving the constitution were all members (albeit next in time) of the organization. The same can be said in the Board's decision in *Euclid-Hitachi Heavy Equipment Ltd.*, [1994] OLRB Rep. November 1514 where no membership cards were signed at or before the inaugural meeting of the organization in that case. A draft constitution was reviewed at the inaugural meeting, votes held to deal with a number of issues concerning the constitution, the constitution was adopted, officers were elected and finally, the constitution was then ratified. In that context, the Board found acceptable the fact that over the course of the next few weeks all those who had attended that meeting became members.

17. In *Gold Crest*, supra the only questionable action of that applicant was the appointment of interim officers, contrary to the terms of that constitution. However, that was done pending election of a permanent committee. The Board's decision makes it clear that it was the membership who had appointed the committee to act on that basis.

18. In *Local 199 U.A.W. Building Corporation*, [1977] OLRB Rep. July 472 at paragraph 10 and referred to in *Caterair*, supra, the Board set out a number of steps to be taken by an organization seeking to establish its status as a trade union. That decision has been referred to in many subsequent decisions as representing a useful guide for individuals to follow. Those steps are set out as follows:

- (1) A constitution should be drafted setting out, among other things, the purpose of the organization (which must include the regulation of labour relations) and the procedure for electing officers and calling meetings;
- (2) the constitution should be placed before a meeting of employees for approval;
- (3) the employees attending such meeting should be admitted to membership;

- (4) the constitution should be adopted or ratified by the vote of said members;
- (5) officers should be elected pursuant to the constitution.

19. In *Euclid-Hitachi*, supra the Board stated that this procedure was intended to be “facilitative rather than restrictive”; intended to “assist employees in achieving the goal of self-organization, rather than to restrict them in the exercise of that right” (para. 26). Board decisions have all generally acknowledged that the five step procedure is not an exhaustive guide. Fundamentally, the statute contemplates that there be clear evidence of contractual obligation through a structured organization. The structure of the organization and the nature of the contract is defined by the constitution and by-laws and the contractual obligation flows from membership in the organization.

20. Thus, the Board has noted that to create a trade union the process must involve not only the settlement of the terms of the constitution for the union but also entering into membership:

“... the taking of steps which make it clear that the individuals involved have actually entered into a contractual relationship one with another on the basis of the terms set forth in the constitution”.

See *Associated Hebrew Schools of Toronto*, [1978] OLRB Rep. September 797 at paragraph 10, cited in *Center Tool & Mold Company Limited*, [1985] OLRB Rep. May 633 and in *Kubota Metal Corporation Fahramet Division*, [1995] OLRB Rep. April 467.

21. In this case, both the minutes of the meeting and the evidence of the applicant was to the effect that the constitution was adopted unanimously. While the actual result was no doubt a sufficient majority to approve the constitution, I have been troubled by the apparent willingness to justify the vote procedure by its result. Similarly, the applicant’s witnesses agreed that any voting procedure asserted regarding the officers would not specifically disclose the results, again notwithstanding the assertion in evidence that the result was unanimous. As noted, I am satisfied that Ms. Wenzel asked if there were any objections following her introduction of the officers to the meeting and that no objections were received. I am not persuaded that there was anything further than that by way of a second show of hands.

22. There are a number of problems with the handling of the business of The People’s Union. Even assuming that the voting procedure resulted in the adoption of the constitution, it was then not followed in a number of respects. The election of officers contemplates the receipt of nominations by members in good standing in the organization, and the holding of a secret ballot election in respect of each position. The entry into membership requires a payment of money. Membership was not acquired in accordance with the constitution and, leaving aside the fee, not until after the meeting. Even allowing that the events of the evening (that is, adopting the constitution and entering into membership) occurred sufficiently close in time so as to be given effect, there were persons who participated in the conduct of business at the meeting who were not and did not become members of the organization.

23. It is not for the Board to grant status. That approach misconstrues the nature of a trade union. A trade union can exist and never come before the Board. For example, a trade union can obtain bargaining rights through voluntary recognition by an employer. However if a trade union seeks to obtain bargaining rights by way of a certificate from the Board, with the attendant protections and obligations, the Board must, at the outset, satisfy itself that the organization does meet the statutory definition of “trade union”.

24. A trade union has obligations to its members apart from its obligation to act on their behalf in dealing with an employer. It may also acquire obligations on behalf of non-members. A union is an

independent organization with rights and responsibilities as between the members and the organization as a whole. As the Board has said in a number of cases, the constitution is the document from which those rights and responsibilities arise and are determined. In addition, the acquisition of bargaining rights on behalf of a group of employees entails serious and substantial statutory responsibilities.

25. As set out earlier, the Board has identified a series of steps to be followed in the formation of a trade union. While not carved in stone, the fulfillment of those steps are meant to indicate that the persons involved understand the seriousness of the responsibilities they seek to undertake as an organization and some evidence of their commitment to that understanding and to those responsibilities. Where a group is unwilling or unable or fails to see the need to follow the basic rules established for the organization, it certainly leaves open to question whether they truly appreciate the nature of the task that they seek to undertake.

26. Are these problems fatal to proving status? If occurring in isolation, one or other of these deficiencies would not pose a concern. The circumstances here do go further than in either *Caterair*, supra or *Gold Crest*, supra. I am not persuaded that the intention of persons participating in the process is particularly relevant, as one can have the best of intentions and fail to create an organization. However, returning to the definition, the applicant simply need establish that it is “an organization of employees”. The reference to “viability” in the Board’s caselaw is a concern about the existence of the organization - is there a viable structure through which the organization can function? It has not been a reference to the quality of the organization. Even if the Board might have concerns about whether or not an organization appreciates the statutory responsibilities it seeks to undertake, that assessment is part of the decision for employees to make in the exercise of their statutory right to join and participate in the lawful activities of a trade union.

27. The Board has consistently said, as in *Caterair*, supra, that it is less concerned with minute issues of constitutionality than it is with determining whether “an organization exists”. That is what the definition requires. The essential features of the five-step process set out in *Local 199 U.A.W.*, supra, are the adoption of a constitution, admission to membership of employees, and the existence of representative persons through whom the organization can function. Those essential features exist here. I have considered the seeming contradiction that there can be an organization because it has a constitution which can continue to exist even while it ignores its constitution. Still, while I have been troubled by the applicant’s seeming disregard for its own enabling constitution, those are matters for the members’ concern, should they be so inclined. I am ultimately driven to the conclusion that the applicant is a trade union.

28. I find therefore that the applicant is a trade union within the meaning of section 1(1) of the Act. This matter is hereby referred to the Registrar in order to schedule a hearing for the purpose of receiving the parties’ evidence and submissions with respect to any and all issues remaining in dispute. This panel is not seized.

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**0521-96-OH Irene Frank, Applicant v. Sammons & Channer Men’s Clothing, Responding Party**

**Discharge - Evidence - Health and Safety - Practice and Procedure - Board declining to receive three letters authored by clinical psychologist tendered by applicant where applicant unprepared to produce letters’ author for purposes of cross-examination - Applicant employee**



**alleging unlawful reprisals under Occupational Health and Safety Act in connection with complaints of sexual harassment made to Human Rights Commission - Events complained of occurring between 1992 and 1996 - Board exercising its discretion against inquiring into application**

**BEFORE:** *Janice Johnston*, Vice-Chair.

**APPEARANCES:** *H. Kopyto* and *Irene Frank* for the applicant; *Laurel Johnson* and *Robert A. J. Landry* for the responding party.

**DECISION OF THE BOARD;** April 22, 1997

1. This is an application pursuant to section 50 of the Occupational Health and Safety Act (the "OHSA").

2. At the outset of the hearing scheduled to deal with this matter, counsel for the responding party, Sammons & Channer (the "company" or the "employer"), raised a number of preliminary matters. Counsel for the company argued that the Board should decline to inquire into this complaint for the following reasons:

- 1) due to the undue delay of the applicant in bringing it;
- 2) the fact that the portions of the complaint were resolved pursuant to an earlier human rights complaint filed by the applicant;
- 3) that there has been no reprisal pursuant to section 50(1);
- 4) that as this complaint deals essentially with allegations of sexual harassment, it should be dealt with pursuant to the Ontario Human Rights Code (the "Code").

3. Section 50 of the OHSA reads as follows:

**50.-** (1) No employer or person acting on behalf of an employer shall,

- (a) dismiss or threaten to dismiss a worker;
- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the Coroners Act.

(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection (1), the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board in which case any regulations governing the practice and procedure of the Board apply with all necessary modifications to the complaint.

(3) The Ontario Labour Relations Board may inquire into any complaint filed under subsection (2), and section 96 of the Labour Relations Act 1995, except subsection (5), applies with all necessary modifications as if such section, except subsection (5), is enacted in and forms part of this Act.

(4) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (2), sections 110, 111, 114, 116 and 117 of the Labour Relations Act 1995 apply with all necessary modifications.

(5) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (2), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection (1) lies upon the employer or the person acting on behalf of the employer.

(6) The Ontario Labour Relations Board shall exercise jurisdiction under this section on a complaint by a Crown employee that the Crown has contravened subsection (1).

(7) Where on an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection (2), the Board determines that a worker has been discharged or otherwise disciplined by an employer for cause and the contract of employment or the collective agreement, as the case may be, does not contain a specific penalty for the infraction, the Board may substitute such other penalty for the discharge or discipline as to the Board seems just and reasonable in all the circumstances.

(8) Despite subsection (2), a person who is subject to a rule or code of discipline under the Police Services Act shall have his or her complaint in relation to an alleged contravention of subsection (1) dealt with under that Act.

4. The applicant, Ms. Irene Frank, commenced employment with the company on April 28, 1989. The employer is a retailer of upscale men's clothing with two locations at shopping malls in London, Ontario. Ms. Frank was employed as a seamstress at the company's Westmount Shopping Mall location. She was employed to assist in making alterations to clothing purchased at the store as well as clothing purchased at another store. Ms. Frank's immediate supervisor was Mr. Dominic Longo. The last day worked by Ms. Frank was April 9, 1996. The employer took the position that she quit her employment on that day. The applicant's representative characterized her separation from employment as a constructive dismissal.

5. In her complaint the applicant asserts that she experienced working conditions which included: an expectation that she would not take breaks and would work without pay for hours in excess of eight in a day; although she was hired to work Monday, Tuesday, Friday and Saturday her days of work were changed without her agreement; and that she was required to work in an area with high noise levels and where there were vibrations from compressors located above the ceiling. Ms. Frank alleges that she was subjected to gender harassment by her supervisor, Dominic Longo, during the first three years of her employment. This harassment continued until Ms. Frank filed a formal human rights complaint pursuant to the Code on May 25, 1992. She provides numerous examples in the health and safety complaint before me, of the alleged sexual harassment and the effect that Mr. Longo's conduct had on her. The human rights complaint was settled in June, 1992. Ms. Frank was not satisfied with the assistance she received from the Human Rights Commission.

6. Ms. Frank goes on to assert in the complaint before me that after she filed her human rights complaint, Mr. Longo engaged in a pattern of reprisal directed against her. The following conduct is alleged in the complaint as indicative of the reprisals and retaliation, for having made the human rights complaint, engaged in by Mr. Longo and others.

8. Shortly following the making of the aforesaid complaint, Dominic Longo engaged in a pattern of reprisal directed against the Applicant which involved arguing with her when such was entirely unnecessary to do, shouting at her and picking loud arguments with her over a variety of different matters which were inappropriate for a display of anger.

9. Some of the incidents to which the Applicant was subjected following her return to her employment following a period of surgery and recovery included the following:

- (a) upon the first day of her return, Dominic Longo indicated to her that he did not want to work with her any more. Peter Channer also told, Dominic Longo, "we will get rid of her on June 15, 1992";
- (b) the applicant was not at work when someone removed the iron from her work area in December, 1993. The iron removed was [a] modern iron which she had been using to iron clothes and it was replaced with a much older model which never worked properly, had to be used on a regular basis, was heavy and hard for the Applicant to use and posed a serious safety hazard as it leaked water. On January 31, 1994, the Applicant mentioned to Longo that the iron had been exchanged for a more dangerous and inferior model. He challenged her assertion and confronted her with the suggestion that she would now report him or someone else for this alleged conduct;
- (c) Longo repeatedly told salespersons who were working on the premises where the Applicant was working "not to go near her" referring to the Applicant. On June 19, 1992, when the Applicant asked Longo for instructions with respect to some work she was doing he reacted with anger against her and asked "Is this an invitation";
- (d) Longo gave her time-consuming and demanding work and thereafter closely monitored her, frequently walking around her from only a few feet away. In or about the month July, 1993, when the Applicant became ill in addition to attempt [sic] to using her holiday period in order to recuperate from the stress induce illness she [sic] experiencing, she required an extra week off work in order to recuperate;
- (e) in or about the month of August, 1993, the Respondent attempted to dismiss the Applicant from her employ. When the Applicant appeared for work on one day, Peter Channer approached her and told her that he tried to phone her to tell her not to bother coming to work. During the summer of 1993, the Applicant was told that she had to work on Thursdays as well. She was given difficult and time-consuming work to do during this time. Both of these decisions were made as a reprisal and in order to attempt to effect her discharge;
- (f) the Applicant had her days and hours of work reduced. For example, in 1994 she was asked to work only half the time that she had previously worked during the months of March, April and May of 1993;
- (g) on December 19, 1995, Longo began calling the Applicant a lair [sic], yelling at her "I have had enough of you this is the end". He used names against her as well saying that "you are possessed" and that "you are causing my ulcer". On November 24, 1994, February 2, 1996, March 5, 1996 and March 18, 1996 he told the Applicant that she was "possessed". During the month of July, 1993, Longo called her a lair [sic], swore at her and yelled at her stating "you caused my allergies" and attempted to displace her from her working space. In addition at that time he threw the iron yelling at her "you are mean and cold, full of poison. You have no love in your heart". This event took place on January 12, 1996;
- (h) Mark Channer further advised the Applicant that she was responsible for causing Dominic Longo's ulcer on March 5, 1996;
- (i) Longo advised the Applicant that he would never forgive her for reporting his conduct and that he didn't want to work with her which comment was made on 1995 [sic]. He also insinuated that the Applicant prayed to the devil and that he could not stand her any more and that "we will have to decide";
- (j) on January 14, 1995, when the Applicant complained to Lloyd Sammons regarding the fact that Dominic Longo was arguing with her and shouting at her, he indicated to her that if she would not get along with him, she should quit. He stated to her "you cannot work with him at [sic] after all that he said to you recently, can you?";
- (k) on January 5, 1995, the Applicant was told by Guido Ticco, a tailor working for the Respondent, to find another job. This was only one of several comments made from time



to time encouraging the Applicant to quit her employment. Similar comments were made on January 19, 1995;

- (l) Dominic Longo would frequently respond to questions asked of him by the Applicant in connection with work that she had to do by giving her the "silent treatment", by shouting and yelling at her for no apparent reason and by acting resentfully and, for example, on one occasion, saying that she "was bugging him" and "you make my life miserable" which comments were made in December, 1995, in September, 1995 and on January 12, 1996;
- (m) Dominic Longo would put the radio on at a very high volume despite protestations by the Applicant that it would bother her and interfere with her concentration and cause her anxiety and stress. When she attempted to turn the radio down, she was accused by Dominic Longo of causing trouble. On February 2, 1996, Longo kept closing the door as a result of which she was no longer allowed to open it [sic] let fresh air in;
- (n) the Respondent attempted to force the Applicant to move to the other store operated by the corporate Respondent where her working conditions would be significantly worse as the space in which she could work was much smaller and there were no windows or fresh air available to her. One effort to move her to the other store took place on June 16, 1992 and a similar effort was made during the month January, 1995;
- (o) throughout the period of her employment, she was required to work at regular pay during statutory holidays and did not have the benefit of having Christmas holidays or other holidays off except for one occasion when she was given one day off.

7. In response to the employer's motion to dismiss this complaint for undue delay, Ms. Frank testified as to the reasons why she left the employment of the company and delayed in bringing this complaint.

8. Ms. Frank testified that from September, 1995 onwards she realized that the stress she was suffering at work was severely affecting her. She was dizzy, fainted often, had headaches, stomach pains and chest pains. She indicated that she felt oppressed and hopeless. She sought the assistance of her family doctor and a psychologist. At the time she was also seeing a specialist for what she referred to as her "underlying problem". It appears that Ms. Frank had circulatory problems and suffered from hypertension. By April, 1996 Ms. Frank testified that, as she was badly run down and could no longer cope with work, she quit her employment. Since leaving the company, Ms. Frank testified that she has recovered emotionally and that most of her physical ailments are gone. She still suffers some dizziness but it is not as severe.

9. Ms. Frank testified that she did not complain about the conduct of Mr. Longo after she filed her human rights complaint because she felt that she was on the "fringe of society" and not "socially empowered". She testified that she didn't know who would help her or where to go. She indicated that she needed her job so she tried to cope as long as she could. In cross-examination, Ms. Frank acknowledged that while she was working, she occasionally saw one of the company's owners, Mr. Peter Channer. She acknowledged that she never requested a meeting with him. She indicated that she did not do so because she felt that he already knew she was having problems with Mr. Longo.

10. On April 9, 1996 it appears that Ms. Frank delivered a letter to her employer outlining her concerns and indicating that the situation at work was affecting her emotional and physical health. She indicated that unless the conditions were corrected it would be impossible for her to attend work. The letter reads as follows:

Dear Messrs. Channer/Sammons

**Re: Irene Frank**

Please note that I have now worked at your Store for approximately seven years. During this time I have attempted to perform my duties as best as I can. I believe that I have done a good job.

Throughout the course of my employment, I have worked long hours, frequently eight hours a day without regular lunch, morning or afternoon breaks. I have continued my employment despite the fact that I have not been paid for a statutory holiday such as Christmas holidays and others that I understand I should be paid for in law (except for one day).

As you know, during the first three years of my employment, I was subjected to gender harassment by Dominic Longo, my immediate supervisor. Such harassment finally ended in 1992 after I complained to the Ontario Human Rights Commission. However, since that time I have continued to be subjected to loud and argumentative treatment by Mr. Longo while at work. Also, Mr. Longo's harassment of me which I believe is motivated by my earlier complaint against him also caused me a great deal of stress and anxiety, including taking away from me a modern iron and replacing it with a much older model. This iron which has to be used on a regular basis is heavy and hard for me to use and poses a serious safety hazard as it leaks water.

Mr. Longo frequently picks arguments with me over anything that comes to his mind and when he does so, this usual [sic] results in him shouting at me and causes me severe emotional distress and anxiety. In addition, from time to time, I have complained about certain work conditions that have affected my health and safety (as well as those of other workers) such as vibrations from compressors above the ceiling as well as high noise levels in the work place. My complaints have never been taken seriously and nothing has been done to lessen the noise or vibrations. Indeed, on one occasion, Mr. Longo turned the radio on louder after I complained about the noise levels saying that I complained about everything and "you started it".

The purpose of my letter is to advise you, as Mr. Longo already knows, that this is affecting my emotional health as well as my physical health and is creating high levels of anxiety. As a result, I wish to advise you that unless corrective action is taken with respect to the noise levels, the vibrations from the compressors and the ongoing shouting and arguments with Mr. Longo directed at me in the immediate future, these conditions will make it impossible for me to attend at my employment.

I am writing this letter to advise you of the impact these matters are having on my health and safety and to ask you investigate the matter and take immediate corrective action.

Yours very truly,

"Irene Frank"  
Irene Frank

Ms. Frank has not returned to work since that time. It is not clear if or how the company responded to this letter. Ms. Frank filed the complaint currently before the Board on May 15, 1996.

11. At the end of Ms. Frank's examination-in-chief, her representative sought to put before the Board three letters written by a Dr. Janie Martini-Bowers, Phd., the clinical psychologist who had been counselling Ms. Frank. As the applicant's representative was not prepared to call Dr. Martini-Bowers as a witness or to produce the doctor for cross-examination, counsel for the employer objected to the introduction of the letters without the opportunity to cross-examine their author.

12. The applicant's representative indicated that the three letters were not being presented as expert evidence but as the reports of her treating doctor. He argued that it is a well established and acknowledged principle that a doctor's letter outlining treatment is routinely admitted without calling the doctor. If you comply with certain formalities, then the letters are admitted for the truth of them without calling the doctor. Therefore, in his view, if the letters are ordinarily admissible in a judicial proceeding, they should be admissible in the quasi-judicial proceedings before the Board. The applicant's representative suggested that as the Board can and does entertain hearsay evidence and there is nothing in the Board's Rules of Procedure preventing their introduction, the Board should not adopt a formal approach and should allow the letters into evidence. In the alternative, the applicant's representative suggested that if the Board was not prepared to admit the letters for the truth of them, then the

Board should accept them for the purpose of explaining the actions taken by Ms. Frank. In his opinion, it would be unrealistic for the Board to expect Ms. Frank to have sufficient money to be able to afford to subpoena the doctor to travel to Toronto to attend the hearing.

13. In response, counsel for the employer pointed out that Dr. Martini-Bowers is not a medical doctor, but holds a Phd. Therefore, as her reports do not meet the civil standard and the test laid out by the courts, the Board should not admit them on that basis. Counsel also pointed out that although the Board might be guided by informality, this does not mean that the Board throws due process and natural justice out the window. It is a part of due process to allow for the cross-examination of witnesses and counsel argued that the Board should not allow the letters into evidence without providing her with an opportunity to test the doctor's views in cross-examination. While acknowledging that the cost of bringing the doctor to Toronto is an unfortunate expense, counsel suggested that it is a necessary one in this case.

14. At the hearing I gave the following oral ruling:

The applicant seeks to introduce 3 letters written by a Dr. Martini-Bowers. The responding party has objected to their introduction, unless the applicant is prepared to produce the author of the letters for the purposes of cross-examination.

After having carefully considered this matter I am of the view that in the absence of agreement by the responding party, it is not appropriate to allow the letters to be introduced into evidence in the absence of the author.

As the agent for the applicant has indicated that Dr. Martini-Bowers will not be called to give evidence or produced for cross-examination, the letters will not be received by the Board for the truth of their contents. The context in which the admission of the letters is sought is the motion by the responding party that the complaint ought to be dismissed for extreme delay. This delay in some instances spans a seven year period.

The agent for the applicant suggests that if I am not willing to receive the letters for the truth of their contents in the absence of their author, then I should accept them as indicative of the reasons for the course of conduct taken by the applicant. It appears to me that, unless I accept the letters for the truth of them, I cannot accept them as indicative of the reasons for Ms. Frank's delay in bringing this application. Accordingly, in the absence of Dr. Martini-Bowers, I am not prepared to admit the letters into evidence.

15. The ruling outlined above was given as a "bottom line" to enable the hearing to proceed. However, it is now appropriate to issue some brief reasons for that ruling.

16. The Board has authority to control its practice and procedure pursuant to section 110(16) of the Labour Relations Act, 1995 (the "Act"). The Board also has the discretion pursuant to section 111(2)(e) to admit hearsay evidence and could have admitted the evidence offered in this case, subject to the weight that ought to be given to it, without requiring the applicant to produce the author of the letters and reports for the purpose of cross examination. In my view, it was not appropriate to proceed in that fashion.

17. Pursuant to the common law, a witness may only give evidence with regard to the facts within his/her personal knowledge. However, the common law has also long recognized an exception with regard to experts who, once it is established that the individual is qualified to render an opinion on the matter in question, are permitted to give what is referred to as "opinion evidence". Medical practitioners and handwriting specialists are two examples of experts whose evidence has been recognized and admitted in Board proceedings. However, the issue before me was not whether the Board should hear expert testimony, but whether I should admit what amounted to unsworn, controversial hearsay evidence without providing the employer the opportunity to cross-examine its author, in



circumstances in which the disputed evidence went to the heart of the preliminary objection concerning the delay of the applicant in commencing these proceedings.

18. This issue has been canvassed by the courts and in the arbitral jurisprudence. In *Re Canadian Broadcasting Corporation and N.A.B.E.T.* (unreported decision dated October 25, 1991 (Burkett)), the arbitrator reviewed some of the relevant Ontario Court jurisprudence and stated as follows:

4. The corporation relied on a number of Ontario Court decisions in support of its position that the medical certificates ought not to be admitted without the opportunity to cross-examine their author. The corporation relies upon *Briand v. Sutton* (No. 2) (1986) 15 C.P.C. (2d) 36 (Ont. S.C.) where, notwithstanding the statutory exception to the hearsay rule permitting the introduction of medical reports into evidence without the author being required to testify, admitted the certificates on condition the doctor be available for cross-examination. The Court ruled that:

“As a matter of practice, at least in a case where there is a contradiction between medical reports of the respective parties, the discretion is exercised in favour of requiring the medical practitioner to give oral testimony.

In any event, in my view, the right of cross-examination is paramount and I would be loath to exercise my discretion by denying counsel for the defence the right of cross-examination.” (emphasis added)

In *re Ferraro v. Lee* (1974) 2 O.R. (2d) 417 (Ont. C.A.), another judgement relied upon by the corporation, the Court identified the primary purpose of S.52 of the Evidence Act as allowing the Court:

“.... to dispense with the unnecessary attendance of medical practitioners at court where the facts were such that their written medical reports would suffice in evidence to enable the fact finding tribunal to adequately understand and apply medical diagnosis and opinion.”

The Court saw the section as allowing the party seeking to rely on the doctor's certificates to make an election as to whether to proceed by way of filing the certificates or by way of calling the doctor. The Court then ruled that:

“.... if leave is granted to file a report the opposite party has an absolute right to require that the doctor attend for cross-examination (in which event the doctor remains the witness of the party who filed the report.) (emphasis added)

Reference is also made to *Kapulica v. Dumancic* (1968) O.R. 438 C.A. wherein it was held that:

“It is apparent that in the light of the view I have expressed, the doctor signing the report became a witness of the party on whose behalf the report was tendered: that there was an absolute right of cross-examination on the part of the defendant and that the denial of this right of cross-examination, particularly in view

of the relevance as to causation, was in itself grounds for the granting of a new trial.” (emphasis added)

19. In *Carew v. Loblaw's Limited* (1977) 18 O.R. (2d) 660 (Ontario H.C.J.), it was noted that:

Once the party files a medical report that party becomes obligated to produce that doctor before the court and for the purpose of cross-examination by the party adverse in interest, if so requested.

20. In determining how best to exercise my discretion, it is appropriate to consider the factors outlined by arbitrator Burkett in *Re Canadian Broadcasting Corporation*, *supra*. His approach, while articulated in the context of arbitral proceedings, is equally applicable or relevant to Board proceedings.

Accordingly it is appropriate in determining whether to admit the reports, to balance the desire to ensure that hearings do not become unduly technical, time-consuming and expensive against the requirements of procedural fairness or due process and natural justice, having regard to the factual context of each case. This approach has been followed in *Metropolitan Toronto Association for Community Living*, (unreported decision dated February 18, 1994 (Saltman)), *Re Peel Memorial Hospital* (1996), 52 L.A.C. (4th) 254 (Howe) and *Miracle Food Mart of Canada* (unreported decision dated August 20, 1996 (Mitchnick)). In *Metropolitan Toronto Association for Community Living*, arbitrator Saltman stated:

During the course of the hearing, the Union indicated its intention to introduce certain medical reports, at which point the Employer requested that the author of those reports be made available for cross-examination. The Union asked that I exercise my discretion to admit the medical reports without requiring that the doctor be produced for purposes of cross-examination.

In my view, the Employer's position must prevail. Firstly, the courts have recognized (1) that there is an obligation on a party who seeks to file a medical report to produce the doctor who prepared the report for purposes of cross-examination; and (2) as a corollary, that the doctor becomes the witness of the party on whose behalf the report is filed: see *Kapulica v. Dumanic*, [1968] 2 O.R. 438 (Ont. C.A.); *Carew v. Loblaw's (sic) Ltd.*, (1997), 18 O.R. (2d) 660, 83 D.L.R. 603 (H.C.J.); *Briand et al. v. Sutton* (1986), 57 O.R. (2d) 629 (H.C.J.). To similar effect are the following arbitral awards: *Re Brampton Hydro-Electric Commission and International Brotherhood of Electrical Workers, Local Union 636*; *Grievance of Cook*, February 16, 1990 (Devlin (unreported)) and *Molson's Brewery*, August 1, 1980 (Weatherill (unreported)) referred to in Weatherill, *Labour Arbitration Procedure* (Canada Law Book), at pp. 66-67. Furthermore, although Subsection 45(10) of the *Labour Relations Act* allows an Arbitrator to admit and act upon evidence which may be inadmissible in a court of law, there is no indication that this Section was intended to compromise procedural fairness, which includes the right to cross-examination. To the extent that other arbitral awards have come to a different conclusion on the matter, I decline to follow them.

Accordingly, it is my ruling that if the Union chooses to submit medical reports and the Employer requests the opportunity to cross-examination on these reports, the doctor must be produced for this purpose. I will remain seized to deal with any other aspects of this issue which may arise as well as with the merits of the dispute.

21. In the case before me, I was not dealing with a straightforward doctor's report indicating that a physical condition prevented an employee from attending work. For example, in a case where a doctor's note indicates that an employee with a broken leg will be off work for six weeks, it is difficult to see why it is necessary to call the doctor to give this evidence. In that situation, the factual context makes it clear that little procedural unfairness would occur if a written report was admitted in the absence of its author. In that instance, it is appropriate for the desire for expedition, informality and cost savings to be given precedence. However in the case before me, the written evidence sought to be admitted was intended to substantiate a medical theory or diagnosis that formed the basis of the reasons for the delay, namely that the sexual and other harassment allegedly suffered by Ms. Frank caused her to wait seven years before filing the health and safety complaint currently before me. The reasons for this delay form a central part of the issue before me. When dealing with a medical theory involving cause and effect, that is based on the subjective emotional or psychological state of the applicant, the doctor should be made available for cross-examination if reliance on written letters or reports is sought.

22. Clearly I had the option of admitting the reports, subject to the weight they could be given. See in this regard *Chrysler Canada Limited*, (1974), 5 L.A.C. (2d) 164 (Rayner); *Steel Company of Canada*, (1975), 8 L.A.C. (2d) 298 (Beatty); *St. Jean de Brebeuf Hospital*, (1977), 16 L.A.C. (2d) 199 (Swan); *Municipality of Metropolitan Toronto*, (1992), 5 L.A.C. (4th) 73 (Springate). In the factual context of this case, this would not have been a fair or appropriate manner of proceeding. In this regard, I adopt the reasoning of arbitrator Burkett in *Canada Broadcasting Corporation*, *supra* where he stated:

"In the factual circumstances of this case, it seems to me that if admitted without being substantiated by its author, the medical certificate should not be given any weight; to admit it on its face subject to weight would be to mislead the parties, and, more importantly, would, in my opinion be unfair to the corporation. The options are to either to refuse to admit the medical certificate or to admit it on the basis that it be substantiated by its author".

Had I admitted the letters and reports in this case, I would not have been prepared to give them any weight as they represented unsworn hearsay evidence that had not been tested by cross-examination. Before leaving this matter I should note that in the context of this case, I have assumed without finding that a clinical psychologist's letters and reports are expert opinion evidence, similar to that of a medical doctor.

#### Argument on the Preliminary Motions

23. In dealing with the first preliminary motion, employer counsel started by pointing out that some of the matters complained of in this case go back seven years. The reason put forward to explain the delay was the applicant's physical and emotional state, which it is alleged was caused by the harassment by Mr. Longo. Counsel suggested that there is no objective or medical evidence before the Board to support that this was the reason for the delay. The only evidence before the Board is that given by the applicant. Counsel argued that even if we assume that she was harassed, it would not be reasonable for her to have allowed it to continue for four years after she filed her human rights complaint. Counsel pointed to the fact that as Ms. Frank filed a complaint pursuant to the Code, clearly she knew how to take action to stop the alleged harassment. It is self-serving and contrary to what she has done in the past to assert that Ms. Frank wasn't capable of filing a complaint in a timely fashion in this case. Counsel suggested that even if the Board was to accept that the stress Ms. Frank was suffering caused her to delay in filing this complaint, by her own evidence the stress was not severe until the fall of 1995. There is therefore no evidence before the Board which explains her state of mind from 1992 to 1995. Counsel requested that the Board dismiss the complaint in its entirety due to the excessive delay. In the alternative, if the Board is not prepared to do that, then counsel argued that the Board should strike those paragraphs in the complaint which deal with events which are many years old.

24. In support of her argument that the Board should dismiss this complaint due to the applicant's excessive delay in filing it, counsel for the employer referred the Board to: Tecumseh Products of Canada, Limited, [1985] OLRB Rep. Jan. 123; The Corporation of the City of Mississauga, [1982] OLRB Rep. Mar. 420; Zentil Plumbing and Heating Contracting Ltd., [1996], OLRB Rep. Feb. 178; Gordon Demianchuk v. Amalgamated Transit Union, Local 113; (unreported, Board File No. 0901-93-U, January 18, 1994; Heinz Mauersberger v. The Canadian Union of Public Employees, Local 831, (unreported, Board File No. 0981-92-U, January 26, 1993); Douglas G. Poole, [1984] OLRB Rep. June 856; Keystone Generator and Starter Rebuilders Limited, (unreported, Board File No. 1245-95-OH, December 15, 1995).

25. In response to the employer's argument regarding delay, the agent for the applicant took the position that the reason for the delay in filing the complaint was the effect that the alleged harassment had on Ms. Frank. In support of his theory he provided the Board with excerpts from two texts, an article, and a decision of the Workers Compensation Appeals Tribunal. He argued that as the employer was the cause of the delay, it should not be able to benefit from it. In his view, there is a reasonable justification for the applicant's delay. In response to counsel for the employer's submissions and the jurisprudence put forward in support of them, the agent for the applicant pointed out that none of the cases relied upon by the employer dealt with the situation where it was the conduct complained of which caused the delay. In addition, he argued that although the Board does not have any medical evidence before it, it does have the evidence of Ms. Frank. He pointed out that she was not cross-examined on this evidence, therefore the employer must have accepted it. He argued that the evidence



of Ms. Frank could be viewed as objective, although he conceded that the fact that the evidence of her medical condition came from her could go the weight the Board is prepared to give it.

26. Counsel on behalf of the employer took the position that the health and safety complaint before me should be dismissed as a significant portion of the applicant's allegations deal with alleged sexual harassment that occurred prior to 1992. Those matters were the subject of a human rights complaint which was settled in 1992. Therefore in counsel's view even if the Board has jurisdiction over the effects of sexual harassment, the matters complained of fall under the original human rights complaint which was settled. Counsel points out that the complaint then goes on to detail examples of alleged reprisals due to the fact that the complainant filed the human rights complaint. As there is a "no-reprisal" section in the Code, if Ms. Frank wishes to allege that there has been employer retaliation due to the fact that she filed a human rights complaint, she should be filing a reprisal complaint pursuant to the Code. In counsel's view, section 50 of the OHSA is abundantly clear that it is applicable to situations where an employer takes certain action because a worker has either acted in compliance with the OHSA, or sought the enforcement of the OHSA. The applicant has not acted in compliance with or sought the enforcement of the OHSA, she exercised her rights pursuant to the Code. In this case, there is no evidence of a work refusal or that any notice was given to the employer that Ms. Frank was raising a health and safety issue or that the alleged harassment was a health and safety issue. After going through the complaint paragraph by paragraph, counsel for the employer pointed out that the only matters which could arguably raise health and safety issues were those pertaining to the iron, the radio and the compressor. Counsel suggested that these aspects of the complaint were frivolous and vexatious and that it amounted to an abuse of process to bring them before the Board. Therefore, they should be dismissed. In support of her arguments counsel referred the Board to: *The Potato Centre*, [1983] OLRB Rep. June 940; *Toronto Transit Commission Wheel Trans Department*, [1990] OLRB Rep. Jan. 90; *H. H. Robertson Inc.*, [1991] OLRB Rep. April 492; *The Great Atlantic & Pacific Company of Canada Limited*, [1987], OLRB Rep. May 714; *Union Miniere Exploration and Mining Corporation*, [1981] OLRB Rep. Nov. 1695; and *Imperial Oil Limited*, (unreported, Board File No. 2381-95-OH, November 27, 1995).

27. In response to the employer's arguments that part of the subject matter of this complaint had been the subject of a previously settled human rights complaint and that any remedy for the alleged reprisals should be pursued under the Code, the agent for the applicant argued that there is nothing in the OHSA that says that the reprisal has to be safety related. He suggested that the wording of section 50 of the OHSA is very broad and that the employer's threat to get rid of her after the human rights complaint was settled is a violation of section 50 of the OHSA. The applicant's representative went through the complaint and pointed out the various incidents in which it is alleged that the employer was penalizing her or retaliating against her. He argued that just because the applicant filed a human rights complaint does not mean she gave up her statutory rights under the OHSA. In his view, simply because the matters were resolved at the Human Rights Commission does not restrict her rights under the OHSA. Some conduct could be a violation of the Code and/or the OHSA and also could enable her to claim relief under workers' compensation legislation or the common law. The applicant's representative took the position that it does not matter to whom Ms. Frank complained, whether it be the Human Rights Commission, the Workers' Compensation Board, or the Labour Board, if the employer engages in a reprisal, a complaint could be filed under another Act (i.e. the OHSA). In the representative's view, gender harassment could fall under the OHSA. Therefore, even though the applicant did have a human rights complaint there is no reason why she cannot also raise valid health and safety concerns. He argued that there are advantages to filing an occupational health and safety complaint and coming before the Board as opposed to filing another human rights complaint. In support of his argument that the applicant was entitled to bring her claim under the OHSA he referred the Board to paragraphs 62 to 65 of the Board's decision in *Lyndhurst Hospital*, [1996] OLRB Rep. May/June 456. The agent for the applicant argued that there was a connection in this case between the hazard (sexual harassment prior

to 1992 and general harassment after that), the complaint and the reprisal such that this is not a frivolous or vexatious complaint.

28. It is the employer's further position that the Board does not have jurisdiction under section 50 of the OHSA to inquire into this complaint. In the alternative, if the Board finds that it does have jurisdiction to inquire into this complaint, it was the position of the employer that the Board should exercise its discretion under section 50(3) of the OHSA not to hear this application. In the employer's view, the OHSA is not intended to cover sexual harassment in the workplace. The purpose of the OHSA is to promote the health and safety of workers. It does so by prescribing safety standards, typically by regulation, and by establishing mechanisms to identify and rectify situations that may be a source of danger. The OHSA focuses on physical threats to a workers' well-being such as machines, devices and equipment. If the OHSA was intended to cover any condition in the workplace, the word "physical" as found in section 43 of the OHSA, would have been unnecessary. The employer argued that sexual harassment and gender discrimination in the workplace are not safety questions to which the OHSA is addressed but rather are dealt with comprehensively under the Code. The Code provides that every person has a right to equal treatment with respect to employment without discrimination because of, *inter alia*, sex. The Code further provides that every employee has a right to freedom from harassment in the workplace because of sex. The Code thus explicitly deals with harassment and discrimination in the workplace and provides appropriate adjudicative responses to those situations. The Ontario Human Rights Commission has been specifically empowered to deal with problems of gender discrimination and sexual harassment in the workplace, including any alleged reprisals for asserting any statutory right. The fact that harassment is specifically addressed in the Code, together with prescribed remedial responses, including compensation for mental anguish, (something not contemplated by the OHSA) suggests that the Code and not the OHSA was intended to deal with sexual harassment in the workplace.

29. In the alternative, counsel for the employer argued that even if the problem of gender discrimination in the workplace might conceivably fit under the OHSA, the Board should decline to hear this case because gender discrimination issues are more appropriately addressed by the Commission under the Code. In exercising its discretion to hear this case, the Board should consider whether the statutory basis for doing so is clear or questionable, both from a substantive and remedial perspective. If the Board's jurisdiction is questionable, or the jurisdiction of another tribunal is clear, the Board ought to defer to the other tribunal and exercise its discretion not to inquire into the complaint. The possibility of overlapping litigation involving different statutory regimes and tribunals supports the argument that the OHSA and the code should be read together to create a single, coherent statutory scheme. Therefore, as it appears that a different tribunal was intended by the Legislature to deal with the specific problem raised in this case, the Board should exercise its discretion not to hear this case even if it finds that has jurisdiction to do so on the basis that public policy dictates that the Board should defer to the specifically mandated tribunal. Accordingly, in the employer's view, the Board ought to take into account the existence of an alternative statutory forum with specific and unequivocal statutory responsibility to deal with gender discrimination and workplace harassment and exercise its discretion under section 50(3) of the OHSA not to hear this matter.

30. The agent for the applicant indicated that he is relying upon the first and second decision of the Board in the Lyndhurst Hospital case, (reported [1995] OLRB Rep. Nov. 1371 and [1996] OLRB Rep. May/June 456) with regard to whether or not the applicant can seek a remedy under the OHSA for the hazard posed by sexual harassment in the workplace. He also submitted that the Board's decision in Meridian Magnesium Products Limited, Board File No. 3154-95-OH decision dated December 17, 1996 (unreported), [now reported at [1996] OLRB Rep. Nov./Dec. 964] was in error for the reasons set out in his application for judicial review, a copy of which he provided to the Board. (A copy of the application for judicial review is attached to this decision for ease of reference.)

31. In response to the submissions of the applicant's representative on all of the preliminary motions, counsel for the employer pointed out that the Board did not hear the evidence of any medical practitioners or other experts to substantiate the applicant's theory regarding the effects of sexual harassment on her ability to file a timely complaint. In putting the various articles and excerpts from texts before the Board in final argument, counsel suggested that the agent for the applicant was trying to get evidence before the Board in final submissions. In addition, as these articles and excerpts deal with the effects of sexual harassment, they do not supply any explanation for the delay in the filing of the complaint from 1992 onwards. Even if the Board were to accept this theory of the applicant, counsel points out that based on the applicant's evidence, the sexual harassment ended after the human rights complaint was filed. In counsel's view, if the representative of the applicant wants the Board to accept that there were medical reasons for Ms. Frank's delay, a doctor should have been called to give that evidence. Counsel asserted that the onus is on the applicant to provide a reasonable and rational explanation for her delay and she has not done so.

32. Even if the Board accepts all of the complaint's allegations, counsel for the employer points out that there is still nothing that brings the complaint within section 50 of the OHSA. There was no reprisal because the complainant was not exercising rights pursuant to the OHSA. There is no question that the applicant has rights under the OHSA but she has not sought to exercise those rights. Counsel disagreed with the assertion of the applicant's agent that it doesn't matter where the original complaint was made. In her view, due to the language of section 50, the reprisal must flow from a health and safety complaint. As the applicant has never brought a health and safety complaint, she cannot assert that the employer has acted improperly pursuant to section 50 of the OHSA. Given the circumstances of this case, counsel for the employer requested that the Board exercise its discretion and refuse to entertain this complaint.

### Decision

33. The relevant sections of the OHSA (in addition to section 50 which is set out in paragraph 3 of this decision) read as follows:

27.(1) A supervisor shall ensure that a worker,

- (a) works in the manner and with the protective devices, measures and procedures required by this Act and the regulations; and
- (b) uses or wears the equipment, protective devices or clothing that the worker's employer requires to be used or worn.

(2) Without limiting the duty imposed by subsection (1), a supervisor shall,

- (a) advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;

• • •

- (c) take every precaution reasonable in the circumstances for the protection of a worker.

28.(1) A worker shall,

- (a) work in compliance with the provisions of this Act and the regulations;

• • •



- (c) report to his or her employer or supervisor the absence of or defect in any equipment or protective device of which the worker is aware and which may endanger himself, herself or another worker; and
- (d) report to his or her employer or supervisor any contravention of this Act or the regulations or the existence of any hazard of which he or she knows.

(2) No worker shall,

- (a) remove or make ineffective any protective device required by the regulations or by his or her employer, without providing an adequate temporary protective device and when the need for removing or making ineffective the protective device has ceased, the protective device shall be replaced immediately;
- (b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself, herself or any other worker; or
- (c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct.

**43.(3)** A worker may refuse to work or do particular work where he or she has reason to believe that,

- (a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
- (b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself; or
- (c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself, herself or another worker.

**34.** The relevant sections of the Code are:

**5. (1)** Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap.

**7. (2)** Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

(3) Every person has a right to be free from,

- (a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- (b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

9. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

35. Section 96(4) of the Labour Relations Act, 1995 provides:

96. (4) Where a labour relations officer is unable to effect a settlement of the matter complained of or where the Board in its discretion considers it advisable to dispense with an inquiry by a labour relations officer, the Board may inquire into the complaint of a contravention of this Act and where the Board is satisfied that an employer, employers' organization, trade union, council of trade unions, person or employee has acted contrary to this Act it shall determine what, if anything, the employer, employers' organization, trade union, council of trade unions, person or employee shall do or refrain from doing with respect thereto and such determination, without limiting the generality of the foregoing may include, despite the provisions of any collective agreement, any one or more of,

- (a) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to cease doing the act or acts complained of;
- (b) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to rectify the act or acts complained of; or
- (c) an order to reinstate in employment or hire the person or employee concerned, with or without compensation, or to compensate instead of hiring or reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer, employers' organization, trade union, council of trade unions, employee or other person jointly or severally.

36. The conduct complained of in this case goes back to the date Ms. Frank commenced employment with the company. It falls roughly into two time periods. From 1988 to 1992 the complaint provides numerous examples of conduct which it is suggested constitutes sexual harassment. In May, 1992 Ms. Frank filed a human rights complaint. From 1992 onwards, it is alleged that the company engaged in reprisals against her for having filed a human rights complaint. In essence, the conduct alleged to have been engaged in by the employer constituting a reprisal consists of: verbal abuse and harassment; removing her iron and replacing it with an unsafe one; reducing her hours of work; playing the radio loudly; attempting to force her to work at another location where her workspace would be smaller and there would be no access to windows or fresh air; and forcing her to work on statutory holidays at regular pay. In deciding the preliminary motions made by the employer, I will assume that all of the facts pleaded in support of all of the alleged conduct and reprisals engaged in by the employer are true and provable.

#### The "reprisal" issue

37. The applicant's representative argued that the language of section 50 of the OHSA was very broad. He suggested that it could be relied on by a worker in cases where an employer engages in a reprisal because the worker filed a complaint pursuant to another statute. In his view, there is nothing in the OHSA that requires the reprisal to be safety related. I cannot accept that this is an accurate and appropriate interpretation of section 50 of the OHSA. Section 50(1) of the OHSA clearly states that an employer is not to:

- (a) dismiss or threaten to dismiss a worker;

- (b) discipline or suspend or threaten to discipline or suspend a worker;
- (c) impose any penalty upon a worker; or
- (d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or has sought the enforcement of this Act. The words “this Act” refers to the OHSA. It does not say “this Act or any other Act” but simply refers to “this Act”. To interpret the words used in section 50 in the manner suggested by the representative of the applicant, would be to read into them an interpretation which makes no sense.

38. In a recent decision, Ontario Hydro, Board Files No: 0164-95-R, 0186-95-R, 0187-95-R and 0251-95-R dated February 27, 1997 (as yet unreported), [now reported at [1997] OLRB Rep. Jan./Feb. 82] the Board’s approach to questions of statutory interpretation is set out as follows:

17. The “modern” rule of statutory interpretation can be simply stated as follows:

One must determine the meaning of legislation in its total context, having regard to the purpose of the legislation, the consequences of the proposed interpretation(s), the presumptions and special rules of interpretation, and the admissible extrinsic aids including the relevant legislative history.

(This is my paraphrasing and not a quote, but see Sullivan, Ruth; Driedger on the Construction of Statutes, 3rd Edition, Toronto, Butterworths, 1995).

- 18. Trite though it may be, it bears observing that the interpretation of a legislative provision must be plausible, and consistent with the apparent legislative purpose.
- 19. The modern presumptions of statutory interpretation, which as their label suggests are no more than rebuttable assumptions which do not necessarily apply in every case, can be summarized as follows:
  - (1) The presumption of knowledge and competence. That is, the Legislature is presumed to know the existing statutory law and jurisprudence, and how courts and tribunals function.
  - (2) The presumption against tautology. That is, it is assumed that the Legislature avoids superfluous or meaningless words, and does not pointlessly repeat itself. Every word is presumed to be intended and advance the Legislature’s purpose. This does not mean that the Legislature cannot repeat itself, it only means that repetition is not to be assumed (see *Hill vs. William (Parklane) Ltd.* [1949] A.C. 530 at 546 (House of Lords)). Pursuant to this presumption, interpretations which render portions of a statute meaningless, pointless or redundant are to be avoided. However, this presumption is easily rebutted by suggesting cogent reasons for the redundant or superfluous words; because for example, of an “abundance of caution” approach. Indeed, as McLaughlin, J. pointed out (albeit in dissent) in *Chrysler Canada Ltd. v. Canada (Competition Tribunal)* [1992] 2 S.C.R. 394 (Supreme Court of Canada), the fact is that Legislatures often use superfluous words.
  - (3) The presumption of consistent expression. That is, that within the same statute, the same words have the same meaning and different words have different meanings. Statutes are not novels, and legislators are assumed to adopt a fixed pattern of expression.
  - (4) The presumption of implied exclusion. That is, to express one thing is to exclude another, and a failure to mention something indicates an attempt to exclude it. This presumption is rebuttable by alternative explanations, competing considerations, and drafting errors.
  - (5) The presumption of coherence. That is, internal conflict is to be avoided by presuming that the parts of a statute fit together to form a rational and internally consistent framework which accomplishes the intended goal.



Applying this approach to the statutory language at issue before me, I am of the view that the words “this Act” as utilized in section 50(1) must be interpreted as referring to the OHSA.

39. It is important to note that the Code, in section 8, also contains a “no reprisal clause”. Section 8 of the Code provides that an individual has the “right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act ... without reprisal or threat of reprisal for so doing”. Accordingly, Ms. Frank could and should have returned to the Human Rights Commission if she felt that her employer was retaliating against her and engaging in reprisals because she instituted proceedings under the Code.

40. I agree with the representative of the applicant that in some circumstances a particular set of facts could support a complaint or case under different legislative schemes. However, once an individual has chosen to file a complaint pursuant to one particular legislative scheme it is not appropriate, nor does it make any sense, to allow the complaint to switch to another legislative scheme or tribunal with regard to a reprisal complaint which is inextricably linked to the original complaint. In other words, once an individual elects to proceed pursuant to one jurisdiction, it is not appropriate to attempt to switch to a different jurisdiction for what is in essence the “second phase” of a particular proceeding.

41. The pleadings and the submissions made by the representative of the applicant suggest that the employer engaged in reprisals against the applicant because she filed a human rights complaint. There is no indication, prior to April, 1996, that Ms. Frank brought any health and safety concerns to her employer, engaged in any work refusal because she felt that her work was unsafe or in any way sought to enforce her rights under the OHSA. Even if I accept that the employer did engage in reprisals, there is nothing before me to support the conclusion that it was because Ms. Frank sought to comply with the OHSA or enforce the OHSA. There is absolutely no basis for a finding that Ms. Frank was acting in compliance with or sought the enforcement of the OHSA prior to April 9, 1996 and that her conduct resulted in a prohibited reprisal by her employer contrary to section 50(1) of the OHSA. Accordingly, I hereby exercise my discretion pursuant to section 50(3) of the OHSA to not enquire further into these events which are alleged to have occurred prior to April, 1996, except as provided later in this decision.

#### The “delay” issue

42. As already noted, the matters complained of in this case go back many years. The Board’s jurisprudence on the issue of delay is extensive. It is helpful to set out the Board’s approach as articulated in *The Corporation of the City of Mississauga*, [1982] OLRB Rep. Mar. 420:

20. It is by now almost a truism that time is of the essence in labour relation matters. It is universally recognized that the speedy resolution of outstanding disputes is of real importance in maintaining an amicable labour-management relationship. In this context, it is difficult to accept that the Legislature ever envisaged that an unfair labour practice, once crystallized, could exist indefinitely in a state of suspended animation and be revived to become a basis for litigation years later. A collective bargaining relationship is an ongoing one, and all of the parties to it - including the employees - are entitled to expect that claims which are not asserted within a reasonable time, or involve matters which have, to all outward appearances, been satisfactorily settled, will not reemerge later. That expectation is a reasonable one from both a common sense and industrial relations perspective. It is precisely this concern which prompts parties to negotiate time limits for the filing of grievances (as the union and the employer in this case have done) and arbitrators to construct a principle analogous to the doctrine of laches to prevent prosecution of untimely claims. (See *Re C.G.E. 3 L.A.C. 980* (Laskin); and *Re Oil Chemical and Atomic Workers, Local 9-672 and Dow Chemical of Canada Limited* [1966] 18 L.A.C. 51 (Arthurs)).

21. In recognition of the fact that it is dealing with statutory rights, the Board has not, heretofore, adopted any rigid practice with respect to the matter of delay - holding, in most cases, that it will simply take this matter into account in determining the remedy if a statutory violation is established. However, whatever the merits of this approach, the Board must also keep in mind the potentially corrosive effect which litigation can have upon the parties' current collective bargaining relationship - quite apart from the outcome. Adversarial relationships are pervasive enough in our industrial relations system without the resurrection of ghosts from the past. In the Board's view, the orderly conduct of an ongoing collective bargaining relationship and the necessity of according a respondent a fair hearing both require that unions, employers and employees recognize a principle of repose with respect to claims that have not been asserted in a timely fashion. If such claims are not launched within a reasonable time, the Board may exercise its discretion pursuant to section 89 and decline to entertain them.

22. A perusal of the Board cases reveals that there has not been a mechanical response to the problems arising from delay. In each case, the Board has considered such factors as: The length of the delay and the reasons for it; when the complainant first became aware of the alleged statutory violation; the nature of the remedy claimed and whether it involves retrospective financial liability or could impact upon the pattern of relationships which has developed since the alleged contravention; and whether the claim is of such nature that fading recollection, the unavailability of witnesses, the deterioration of evidence, or the disposal of records, would hamper a fair hearing of the issues in dispute. Moreover, the Board has recognized that some latitude must be given to parties who are unaware of their statutory rights or, who, through inexperience take some time to properly focus their concerns and file a complaint. But there must be some limit, and in my view unless the circumstances are exceptional or there are overriding public policy considerations, that limit should be measured in months rather than years.

23. The Board has recently had occasion to review its approach to the issue of delay in *Sheller-Globe of Canada Limited*, [1982] OLRB Rep. Jan. 113 - a case which bears some resemblance to the present one, (although there the delay was 2 1/2 years and here it is five). In *Sheller-Globe*, the complainant was discharged in March 1979, and filed her complaint with the Board in October 1981. In between, she had discussions with union and employer officials, she took legal advice (in March of 1979), she filed a complaint with the Human Rights Commission, and in December 1980, she filed a wrongful dismissal action. Finally, two and a half years after the alleged offence, she complained to this Board that her union had not represented her adequately and requested that this Board direct that the propriety of her discharge be considered by a board of arbitration constituted in accordance with the collective agreement in effect at the time her employment was terminated. The Board dismissed the complaint with the following observations:

"13. A delay of the present magnitude carries with it an element of prejudice which is undeniable. Memories fade, and a party's ability to present a defence will deteriorate for that reason alone. This is particularly true when a party is not on notice that an action against it, requiring the litigation of certain events, remains pending. Here the respondent was justifiably under the impression that the grievance route, or any further demands against the union, had been abandoned in favour of other actions against the company. The lingering discussions which the complainant's husband had with Mr. Pattison and the stewards were clearly of an amicable nature; they provided no indication that action would subsequently be directed against the trade union itself, so that notes or other forms of evidence could be more actively maintained. The defence of the employer is not the defence of the trade union in these proceedings. The Board would be concerned not with the matter of cause for discharge, but rather the steps which the respondent's officials went through in concluding in their own minds that no grounds for a grievance existed. That defence would turn upon the recollection and credibility of the respondent's own officials. It might be noted parenthetically that the Labour Board, in administering the Labour Relations Act, is primarily concerned with the ongoing labour relations of a workplace, and such workplaces do not remain static over time. The Board as a result has always been conscious of the need for expedition in its practices and procedures. The delay in the present case raises concerns over an appropriate remedy, if the Board were to permit this complaint to now proceed, which are not fully answered by the complainant's concession as to damages. In circumstances such as the present, the onus shifts to a complainant to satisfy the Board that there are compelling labour relations reasons to cause the Board to exercise its discretion and entertain the complaint under section 89.

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15. In the present case, the delay has indeed been “extreme”, and the factors put forward by the complainant are insufficient to deliver her from the consequences of that delay. Certainly the Board has no quarrel with the notion of an aggrieved individual investigating other avenues of redress prior to launching a section 68 application with the Board. But a point is reached, after a reasonable period of time, when the individual must decide whether it is going to go against the trade union or not, and if so, then overt steps must be taken in that direction. The individual cannot rely indefinitely on the efforts being taken on his or her behalf in other directions, and then come back against the trade union when those efforts prove fruitless. The important point to note here is that the other forms of action being pursued by the complainant were directed solely against the employer. Not a word was said to the trade union during that period to indicate that its conduct was being viewed as unlawful, or that its own position might still be placed in jeopardy. The complainant will not now be permitted, at this date, to use section 68 against the trade union as a last resort to reach the employer”.

43. The justification provided for the delay in this case is the evidence of Ms. Frank concerning the effect of the harassment she was suffering, that she did not know where to go or whom to turn to and that she did not feel “socially empowered”. She primarily attributes her inaction to the stress she was suffering due to the actions of her employer. There is no dispute that Ms. Frank filed a human rights complaint in 1992. She was therefore capable of exploring her rights under the Code and of asserting them. It was clear that she was not satisfied with the efforts of the Human Rights Commission on her behalf and that she chose not to pursue matters there. It was not disputed that some of the allegations in the matter before me were also raised in her human rights complaint. Therefore before 1992, Ms. Frank chose to pursue her rights in another forum. There is no basis for concluding that she was not also capable of filing a health and safety complaint at that time. Therefore due to the extreme delay in filing this complaint, and in the absence of any exceptional circumstances excusing it, it is not appropriate to enquire further into the incidents prior to 1992 and I decline to do so.

44. I have some sympathy for Ms. Frank and I accept that she was suffering a great deal of stress at work. Nevertheless, I cannot accept the explanation or the reasons she provided for her delay in complaining of events which occurred from 1992-1996. In my view, she has not provided a reasonable explanation for her failure to act in a timely fashion after 1992. While I accept that stress can be debilitating, in the absence of some objective medical evidence concerning the effects of stress on Ms. Frank specifically, I cannot accept her subjective view that the stress she was suffering totally prevented her from taking any steps to put an end to it until four years had elapsed. It is simply too self-serving to assert at this point that the stress and anxiety she was suffering inhibited her ability to file a complaint. There is no explanation for this delay from 1992 onwards, other than the subjective testimony regarding her medical condition provided by Ms. Frank. The applicant’s representative conceded that it was appropriate for me to consider that such a delay could prejudice the ability of the company to mount a defence due to fading recollections, unavailability of witnesses and deterioration of evidence. Accordingly, after taking the potential prejudice to the employer into account and in all of the circumstances, the delay in this case is too extreme. I therefore exercise my discretion pursuant to section 50(3) of the OHSA (which incorporates section 96 of the Act) and decline to enquire further into any allegations of events that occurred prior to 1996.

#### The “jurisdictional” issue

45. The final preliminary motion made by counsel for the employer was a motion to dismiss this complaint on the basis that the matters complained of are primarily allegations of sexual harassment which should be pursued under the Code, rather than a remedy sought under the OHSA.



46. It appears, based on the evidence of Ms. Frank and the submissions of the parties, that the sexual harassment ended in 1992. The personal harassment continued but it took a different form. Once again it is therefore appropriate to break this complaint down into two time periods, pre-1992 and post-1992.

47. The matters raised by the applicant pertaining to the pre-1992 time period consist primarily of allegations of sexual harassment and allegations which could possibly involve breaches of the Employment Standards Act. The Board has recently considered the appropriateness of dealing with and remedying complaints of sexual harassment pursuant to the OHSA in *Meridian Magnesium Products Limited*, supra. The decision provides an excellent overview of the OHSA and the Code, including an analysis of: the legislative purpose behind each; the protections provided by each; the administration of each; and the remedies available under each. I agree with the Chair's conclusion in the *Meridian Magnesium Products* case that, although the language of the OHSA is wide enough to include complaints of sexual harassment, it is appropriate for the Board to defer to the procedures of the Code and the Commission for the variety of practical, legal, and policy reasons set out in the decision, which I need not repeat here. Accordingly for the above reasons, I would allow the motion of the employer to dismiss the complaint on this basis as well and exercise my discretion pursuant to section 50(3) of the OHSA to decline to enquire further into the allegations of sexual harassment raised by Ms. Frank.

48. The post 1992 allegations raised by Ms. Frank are set out in paragraph seven of this decision. They cover a variety of matters, some of which would arguably be matters traditionally raised as health and safety concerns under the OHSA. For example, her complaints about the compressor noise and loud radio are physical plant issues (see, section 43(3)(b) of the OHSA) and the complaint about the iron clearly falls under the heading of equipment (see section 43(3)(a) of the OHSA). However, what of the allegations of verbal abuse, yelling and general nastiness engaged in by her supervisor, Mr. Longo? Are these matters which should or could fall under section 43(3) of the OHSA?

49. In dealing with whether sexual harassment could arguably be covered by the OHSA, the Chair of the Board wrote in *Meridian Magnesium Products Limited*, supra as follows:

118. As I have already noted, the OHSA is framed in very general terms in an effort to address workplace hazards of all kinds; because it would not have been feasible for the Legislature to try to foresee, and spell out in advance, all possible sources of danger in every conceivable work setting. The OHSA applies to workplaces as diverse as auto plants and golf courses; so what the OHSA does, is define specific risks (or levels of risk) in particular situations, then cast a general obligation on workplace parties to examine their own environment with a view to eliminating risks not specifically identified in the statute or regulations.
119. Against that background, it might be said that harassment may pose a risk to the employees' health or well-being, and that harassment and gender discrimination could therefore be encompassed by both the purpose and the general language of the OHSA. Harassment could be considered to be a kind of "assault" on the psyche, which can arguably fit into the elastic language of the OHSA.
120. There is, of course, no regulation under the OHSA dealing with sexual harassment in the workplace - even though its treatment in the Human Rights Code confirms that the Legislature knew that this problem could arise in any work setting where people work together. On the other hand, although sexual (or other) harassment is missing from the OHSA (at least explicitly), there is some legislative guidance about how such problems should arguably be characterized.
121. The Workers' Compensation Appeal Tribunal has held under the Workers' Compensation Act that sexual harassment in the workplace can lead to a compensable psychological trauma and disability. It is workplace behaviour that has an injurious impact just like an accident or industrial disease; and the fact that it may be "intentional" or "illegal"

behaviour is beside the point. It is an aspect of the work environment that can produce harm and compensable injury.

122. The Human Rights Code also recognizes that harassment and gender discrimination may produce “mental anguish”, which warrants compensation. Again, there is statutory recognition that harassment in the workplace has an adverse impact on the victim.
123. These legislative references merely support the common sense inference that harassment or gender discrimination can have an adverse psychological impact on employees that, in a particular case, may not only make it difficult for an aggrieved employee to continue at work, but may also be damaging to an employee’s mental health or well-being. Indeed, it is quite foreseeable that serious harassment could lead to stress, which, in turn, could have adverse physical and psychological manifestations. And if harassment results in a compensable disability, or its impact requires medical treatment, there is nothing incongruous about treating it as a “hazard”, or “risk”, or a threat to an employee’s “safety” at work.
124. Once one accepts the notion of a mental illness, or psychological disability, it is no great leap to look for the cause in overt discrimination or harassment at work - or to treat such illegal behaviour as a “danger” to an employee’s health. From this perspective, an employee’s “health” might arguably include “mental health” - which the OHSA does not specifically mention, but does not rule out either. And once that proposition is accepted, the prevention of workplace harassment may well fall within the ambit of the very general duties imposed upon employers, employees and supervisors under section 25(2)(h) and 28(2)(b) and 27(2)(c) of the OHSA (see: the decision in *Pauline Au v. Lyndhurst Hospital*, [1995] OLRB Rep. Nov. 1371).

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125. I have been somewhat tentative in the preceding paragraphs, because although all of these propositions are certainly “arguable”, sexual harassment does not fit very well into the OHSA scheme - quite apart from the potential overlap with the investigatory and enforcement processes set out in the Code. Nor is there much reason to believe that issues of race, creed, colour (etc.) - which admittedly can cause tension or distress in the workplace - were ever intended to be dealt with under the OHSA (in addition to, or instead of the Ontario Human Rights Code). In fact, the specificity of the Code, the specific addition of harassment in 1981, and the specific remedial prescriptions for harassment cases, all suggest the opposite conclusion.
126. Sexual (or racial) harassment in the workplace may fit a literal or even a purposive reading of the term “hazard” in the OHSA, but the OHSA does not deal very clearly with problems of this kind, and the existence of the very specific provisions in the Code, suggests that the OHSA was not intended to do so. For as I have already noted, the Code is also an employment statute that regulates behaviour in the workplace, and prohibits both harassment and reprisals. Moreover, the powers of the Commission and a board of inquiry permit a focused or nuanced response to these specifically identified workplace problems. This Board has no monopoly in the area of employment regulation, or even in the area of employment reprisals.
127. I shall have more to say about that below. At this point, I merely note that within the OHSA itself, the emphasis seems to be on physical threats to a worker’s well-being, which may suggest that open-ended words like “health”, “safety” or “hazard” should be construed in that light. For as the Court observed in *Colquhoun v. Brooks* (1889), 14 A.C. 493:

It is beyond dispute ... that we are entitled and indeed bound when constructing the terms of any provision found in a statute to consider any other parts of the Act which throw light upon the intention of the Legislature and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act.

From this perspective, it might be said that general words like “hazard”, “health”, “danger”, “precaution” should be interpreted in light of the way health and safety problems are considered elsewhere in the statute, and are limited to physical risks or hazards.

128. The provisions of the OHSA focus primarily - if not exclusively - on physical hazards in the workplace: on machines, devices, things, equipment, protective devices, building structures, dangerous biological or physical agents, and so on. (See, for example, sections 8, 9, and 25, and the powers of an inspector under sections 54-60). Even the right to refuse unsafe work under section 43 focuses on the “equipment, machine, device or thing the worker is to use” or the “physical condition of the workplace”. The physical element is either implicit in the hazard specifically identified, or has been added by the Legislature, as in section 43 which gives an employee the right to refuse to work when the situation is unsafe. If section 43 had been intended to cover any condition in the workplace, the word “physical” would not have been necessary.
129. Not only does the OHSA appear to be concerned with physical threats of one kind or another, but the provisions of the OHSA do not seem to focus at all on “dangerous people”, except in relation to physical activities or the dangerous operation of equipment. Thus, section 28(2) of the OHSA provides:

28. (2) No worker shall,

• • •

- (b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself, herself or any other worker; or
- (c) engage in any prank, contest, feat of strength, unnecessary running or rough and boisterous conduct.

Even *Barmaid's Arms*, [1995] OLRB Rep. March 229, a case upon which the complainant relies, involved a physical threat to the employee in question.

130. This is not to say that the OHSA ignores employee behaviour that could pose a danger to other workers. If an employee engages in violent behaviour at work, “rough conduct” or some ill-intentioned “prank”, such behaviour may be caught by OHSA section 28(2), even though it may be a manifestation of misogyny, racism, or other problems addressed in the Code. One must be careful not to unduly limit the scope of OHSA protections, or assume too readily that behaviour can be precisely characterized or confined to precise legal compartments. It is simply that “hazardous words”, “dangerous pictures” and “injurious attitudes” - the allegations in this case - do not fit very well into the range of risks to which the OHSA is specifically addressed. Nor are these the sorts of things that appear to be contemplated by the kinds of remedial orders that an inspector may make under section 57. The provisions of the OHSA do not clearly speak to or easily encompass “dangers” to an employee’s mental health - be they overt and unlawful harassment (sexual, racial or otherwise) as alleged in this case, or simply conditions in the workplace which generate stress (technological change, impending layoffs, a new boss, friction with other employees, workload, etc.). Nor is it easy to accept that anything that causes “stress” is necessarily a “hazard” regulated by the OHSA.
131. Again, I do not suggest that the OHSA cannot be read to cover circumstances that impact upon the equanimity or mental health of employees - including the behaviour of other employees. It does not take much imagination to think of circumstances (or employee behaviour) that could cause annoyance, anger, anxiety, stress, or even, in extreme cases, mental illness - depending upon the situation, the response of the individual employee, and perhaps the other sources of distress to which an employee may be subject outside the workplace. For, the causes of “stress” are numerous, the responses to stress may be quite variable, [as WCAT has explored in cases such as: Decision No. 352/92 (August 22, 1995); Decision No. 916/94 (October 27, 1995); Decision No. 142/93 (November 21, 1995); Decision No. 528/95 (February 20, 1996) and Decision No. 511/95 (February 26, 1996)].



132. It is "arguable" that the general terms in the OHSA can be read to encompass this kind of "risk" to employee mental well-being. The point is, issues of this kind are not captured very well - or at least very explicitly - by the general provisions of the OHSA.

Given that sexual harassment could arguably be covered under the OHSA, what about harassment or verbal abuse that is more general in nature and which would not be covered by the enumerated grounds in the Code? Is it arguably covered by the OHSA?

50. At this juncture in the proceedings, it is not necessary nor is it appropriate to answer this question. Apart from the letter purportedly written by Ms. Frank in April, 1996 to her employer, Ms. Frank has not sought out the protection of the OHSA. In other words, there is nothing to indicate that prior to April, 1996 that Ms. Frank ever sought to enforce her rights under the OHSA. If she has not acted in compliance with the OHSA or sought the enforcement of the OHSA, the company cannot be accused of engaging in a reprisal contrary to section 50 of the Act. Regardless of whether or not the conduct of Mr. Longo, of which she now complains, may constitute a breach of some section of the OHSA, the company does not appear to have violated section 50 of the Act, as there is nothing before me to indicate how the company responded to her letter in April, 1996.

51. Therefore, in all the circumstances of this case and for all of the reasons set out under the headings of reprisal, delay and jurisdiction I find that this, subject to the comments that follow, is an appropriate case to exercise my discretion under section 50(3) of the OHSA to not enquire further into the portions of this complaint dealing with events that occurred prior to April, 1996.

52. This brings me to the letter written by Ms. Frank in April, 1996. It appears that Ms. Frank may have been seeking to enforce her rights under the OHSA at this point. In the letter, she raises a variety of issues including some which I have already dismissed as either untimely or as not properly before me. The only health and safety issues I have not dismissed and which still form part of this complaint are those which are of a continuing nature (i.e. the iron, vibrations from the compressors and high noise levels in the workplace) and, assuming without deciding the jurisdictional issue, timely allegations of harassment by Mr. Longo. While I have accepted the facts as asserted by the applicant for purposes of dealing with the preliminary issues, there is no evidence yet that the company actually received the April, 1996 letter, ever responded to or dealt with it, or ever engaged in any reprisals as against Ms. Frank because of the letter contrary to section 50 of the OHSA. It appears that the employer has treated Ms. Frank as having terminated her employment in April, 1996. It is not clear on the material before me whether Ms. Frank intended to quit in April, 1996 (although as noted earlier in this decision she herself referred to having "quit" her employment while giving her evidence) or whether she intended to engage in a work refusal pursuant to the OHSA. In order to deal with these matters, I would need to determine what actually took place in April, 1996.

53. Accordingly, it is necessary to re-list this case to deal with the limited aspect of the case that remains. However, prior to doing so, it is appropriate to provide the parties with an opportunity to file any additional submissions and documents with the Board that they may wish to rely upon. Therefore the representative of the applicant is to file any additional submissions and documents with the Board, with a copy to counsel for the employer, before May 9, 1997. The employer shall then have until May 23, 1997 to provide the Board and the representative of the applicant with any submissions or documents upon which it seeks to rely. This matter will then be re-listed for hearing. Should either party wish to pursue settlement discussions, a labour relations officer can be made available to assist the parties at their request. Such a request should be directed to the Manager of Field Services.

54. I will remain seized of this matter in the event that it is necessary to deal further with this complaint or clarify any portions of this decision.

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**3854-96-U National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 35, Applicant v. Siemens Electric Limited, Responding Party**

**Interference in Trade Unions - Unfair Labour Practice - Board noting that union's pleadings, even if accepted, not clearly pointing to any prohibited conduct on part of employer - Board also observing that all of the circumstances making up the union's complaint already part of the record in related arbitration proceeding - Board declining to inquire into unfair labour practice complaint where problem identified by union not a labour relations problem and where no labour relations purpose would be served by generating further layer of litigation between the parties - Application dismissed**

**BEFORE:** *Bram Herlich*, Vice-Chair.

**DECISION OF THE BOARD;** April 29, 1997

1. This is an application filed pursuant to section 96 of the Labour Relations Act, 1995 (the "Act") wherein the applicant (the "union") alleges that the responding party (the "employer") has violated section 70 of the Act.
2. The employer asserts that the application fails to make out a prima facie case and ought to therefore be dismissed.
3. The Board has reviewed the parties' pleadings (including the applicant's additional particulars) and is persuaded that we ought to exercise our discretion to not inquire into this matter any further. Consequently, and for reasons which we shall now briefly articulate, this application is hereby dismissed.
4. The application arises essentially out of the fact that a voice mail message left for a union official by a grievor and witness at an ongoing arbitration hearing appears to have been forwarded to the voice mail of the employer's Senior Human Resources Administrator, John Evangelista.
5. The message in question has now become part of the evidence in the ongoing arbitration proceeding. Indeed, the arbitrator appears to have heard evidence regarding the receipt of the message and has even taken a view of Mr. Evangelista's office for that purpose.
6. One may readily conclude the union may have or had a security problem with respect to its voice mail. There is, however, nothing in the union's pleadings which leads inexorably to the conclusion that the employer is responsible for that security difficulty, let alone that it has set out to deliberately create it or benefit from it.
7. In the circumstance where the union's pleadings, even if accepted, do not clearly point to any prohibited conduct on the part of the employer and where all of the circumstances regarding the transmission and receipt of the message in question are already part of the record in a related proceeding, we do not see that any labour relations purpose would be served by generating a further layer of litigation.
8. Whatever the outcome of the arbitration proceedings, the parties, or at least the union, may well have a continuing problem regarding voice mail security. But that problem is one which we would have hoped can be easily resolved (in any number of ways) and, in any event, is not, at its heart, a labour relations problem.

9. This application is dismissed.
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**0063-97-R** Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 880, Applicant v. **Sterling Marine Fuels**, A Division of McAsphalt Industries Ltd., Responding Party v. International Union of Operating Engineers, Local 793, Intervenor

**Certification - Constitutional Law - Practice and Procedure - Timeliness - Employer and incumbent union responding to union's certification application and asserting that application untimely - Employer also asserting that its labour relations governed by Canada Labour Code - Applicant and incumbent union directed to file submissions within two days on constitutional issue, including submissions on how Board should deal with the application given the issue**

**BEFORE:** *S. Liang*, Vice-Chair, and Board Members *J. A. Rundle* and *D. A. Patterson*.

**DECISION OF THE BOARD;** April 9, 1997

1. This is an application for certification. The Board finds it appropriate to defer the holding of a representation vote pending submissions on certain issues.
2. In the response filed by the employer and the intervention filed by the incumbent union, two significant issues are raised.
3. First, it is the position of the employer and the incumbent union that this application is untimely, having regard to the provisions of section 7(6) of the Labour Relations Act, 1995, which states:

7. (6) Where a collective agreement referred to in subsection (4) or (5) provides that it will continue to operate for a further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement, a trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement during the further term or successive terms only during the last two months of each year that it so continues to operate, or after the commencement of the last two months of its operation, as the case may be.
4. The relevant provisions of the agreement between the employer and incumbent union are attached to the response and state:

This Collective Agreement shall come into effect on September 8th, 1994 and shall remain in effect until February 28th, 1997, and shall continue in force from year to year thereafter unless either party shall furnish the other with notice of termination of or proposed revision of this Collective Agreement not more than ninety (90) days before February 28, 1997, or in a like period in any year thereafter.
5. The employer and the incumbent union are agreed that no party served notice of termination or proposed revision of the agreement in accordance with that article. Assuming this to be correct, the agreement thus appears to remain in force for another year. This application, having been made on April 4, 1997, would thus appear to be untimely.
6. Having regard to the foregoing, the applicant is directed to provide submissions indicating whether there is any reason why the Board should not accept the facts as set out by the employer and incumbent union to be true and on the basis of these facts, find this application to be untimely.



7. Second, the employer submits that its labour relations are governed by the Canada Labour Code and not the Labour Relations Act, 1995, and submits a copy of the certificate issued by the Canada Labour Relations Board to the incumbent union. The employer submits, among other things, that the Board is without jurisdiction to entertain this application, including to conduct a vote.

8. The Board directs the applicant and the incumbent union to provide their submissions on the constitutional matter raised by the employer, including their submissions on how the Board should deal with this application given this issue.

9. Any written submissions must be received by the Board and by the other parties by no later than 5:00 p.m. on Friday, April 11, 1997.

**2049-96-R; 2059-96-R** United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Applicant v. **Titan Tool & Die Limited**, Responding Party v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) Local 195, Intervenor; National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) Local 195, Applicant v. Titan Tool & Die Ltd., Responding Party v. United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Intervenor

Certification - Board earlier barring CAW-Canada under section 10(3) of the Act from re-applying for certification for one year following unsuccessful application - Ten months later, UAW and local of CAW-Canada applying for certification (on same day) - Board directing single representation vote - Significant majority of ballots cast in favour of CAW-Canada local, but employer asking Board to dismiss application - Board not accepting employer's argument that automatic statutory bar against CAW-Canada under section 10(3) of the Act applying to local of CAW-Canada - Board analyzing nature and purpose of its discretion under section 111(2)(k) of the Act to refuse to entertain a subsequent certification application and Board elaborating some factors to guide that discretion - Applying those factors, Board seeing no reason to refuse to give effect to results of representation vote in this case - Certificate issuing

**BEFORE:** *Russell G. Goodfellow*, Vice-Chair, and Board Members *S. C. Laing* and *D. A. Patterson*.

**APPEARANCES:** *Frank Luce*, *Roy Symons* and *Dan Flynn* for the applicant; *George W. King* and *William Beale* for the responding party.

**DECISION OF RUSSELL G. GOODFELLOW, VICE-CHAIR AND BOARD MEMBER D. A. PATTERSON;** April 7, 1997

1. This is the continuation of an application for certification. By decision dated October 22, 1996 in this file and in Board File No. 2049-96-R, the Board directed the holding of a single representation vote. Board File No. 2049-96-R is an application for certification by the United Auto Workers ("UAW") for the same bargaining unit. Although there was initially some dispute, the Board treated the applications as having been filed on the same day.

2. The vote was held on October 24, 1996. Employees were given the option of choosing the applicant ("Local 195"), the UAW, or no union at all. There were 112 names on the voter's list. One hundred and eight employees voted. Seven ballots were segregated and not counted. One ballot was

spoiled. Of the remaining 100 ballots, 62 were cast in favour of Local 195, 37 were cast in favour of the UAW, and 1 ballot was marked in favour of no union. There were no challenges to the manner in which the vote was conducted. The only remaining issue is whether the Board should decline to give effect to the results of the vote having regard to a bar imposed upon the CAW-Canada in a decision dated December 7, 1995. The bar was imposed following an earlier unsuccessful application for certification for the same bargaining unit. The responding party identified the “bar issue” in its response and a differently constituted panel of the Board ruled that the issue could be dealt with, as necessary, following the taking of the representation vote and the counting of the ballots. As the issue remained unresolved at that stage, the matter was scheduled for hearing before this panel.

3. Only Local 195 and the employer participated in the hearing. It was the employer’s position that although the Board has in the past accepted applications for certification by a local within the period of a bar imposed upon a national or international, and vice versa, the law has been changed by Bill 7. According to the employer, section 10(3) of the new Act was intended to alter the effect of the Board’s prior case law by imposing an automatic one year bar following an unsuccessful “application for certification by the trade union as the bargaining agent of the employees in the bargaining unit”. The gist of the employer’s argument was that, by introducing a separate provision which uses the term “trade union” rather than “applicant” as appears in section 111(2)(k) of the Act, the Legislature must have intended to bar a broader class of applicants. In the alternative, the employer submitted that the evidence in this case establishes that this was, in effect, a second application for certification by the CAW-Canada within a period of a year and that it ought to have been caught by the bar imposed in the Board’s earlier decision.

4. Taking each of these arguments in turn, the Board is not persuaded that section 10(3) was intended to alter the effect of its prior case law by barring subsequent applications for certification by different trade union applicants. Section 10(3) states:

**10. (3)** If the Board dismisses an application for certification under this section, the Board shall not consider another application for certification by the trade union as the bargaining agent of the employees in the bargaining unit until one year has elapsed after the dismissal.

5. There is no dispute that the CAW-Canada and Local 195 are different entities, each of which qualifies as a “trade union” within the meaning of the Act. Both have “status” before this Board. Moreover, and as acknowledged by the employer, the Board’s approach has been to interpret the discretionary bar it traditionally imposed under section 111(2)(k) as applying to subsequent applications for certification by different trade unions. We believe that if the Legislature had intended the Board to alter this approach, it would have expressed that intention in much clearer language than by the use of the phrase “the trade union” in section 10(3).

6. Section 10(3) has two purposes. First, it makes mandatory in application for certification that which was formerly discretionary under section 111(2)(k). Second, and consistent with concurrent amendments to section 111(2)(k), section 10(3) extends the period of the bar to one year rather than ten months. In the Board’s view, the use of the phrase “the trade union”, rather than “the applicant”, simply reflects the fact that section 10, unlike section 111(2)(k), deals only with applications for certification. Further, the phrase “the trade union” can be found throughout the certification provisions of the Act and, more particularly, in the two preceding subsections, which state:

**10. (1)** The Board shall certify a trade union as the bargaining agent of the employees in a bargaining unit that is determined by the Board to be appropriate for collective bargaining if more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union.

(2) The Board shall not certify the trade union as bargaining agent and shall dismiss the application for certification if 50 per cent or less of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union.

Finally, we believe that the use of the definite article before the words “trade union” in section 10(3) discloses a legislative intention which is clearly at odds with the employer’s first argument.

7. Turning to the employer’s second argument, section 111(2)(k) provides:

111. (2) Without limiting the generality of subsection (1), the Board has power,

• • •

- (k) to bar an unsuccessful applicant for any period not exceeding one year from the date of the dismissal of the unsuccessful application, or to refuse to entertain a new application by an unsuccessful applicant or by any of the employees affected by an unsuccessful application or by any person or trade union representing the employees within any period not exceeding one year from the date of the dismissal of the unsuccessful application.

8. As already indicated, employer counsel did not dispute that the Board’s practice has been to treat different legal entities and different “trade unions” as different “applicants” within the meaning of section 111(2)(k); nor did counsel suggest that the CAW-Canada and Local 195 are not different entities under the Act. Rather, counsel argued that the evidence supported a finding that this was, in effect, a second application for certification by the CAW-Canada within the one year period. In the majority’s view, this argument, too, must be rejected.

9. To begin, once it is conceded or established that Local 195 and the CAW-Canada are two different entities, each of which qualifies as a “trade union” within the meaning of the Act, that is properly the end of the matter for the purposes of the bar imposed in the Board’s December 7, 1995 decision. As employer counsel noted, the Board treats nationals and locals as separate entities and has not concluded that a bar imposed against one should apply to the other, nor has it refused to entertain a subsequent application for certification. Although the Board has, in some cases, heard evidence as to the relationship between a subsequent applicant and a former applicant in the context of a “bar” argument, the circumstances have been extremely limited and our attention was not drawn to any cases in which such arguments have succeeded. Thus, for example, the Board has heard evidence: that employees would have been confused as to which union had been the subject of the earlier vote; of an alleged agreement between two locals that the applicant would, immediately upon certification, transfer its bargaining rights to a sister local that had been the subject of an earlier bar; and that a national applicant and a local union that had been the subject of an earlier bar were not legally distinct (see e.g. *The Clorox Company of Canada Ltd.*, [1980] OLRB Rep. Feb. 184; *The Corporation of the City of Gloucester* [1989] OLRB Rep. Aug. 846; *Repla Limited*, [1990] OLRB Rep. May 612). Moreover, as the last mentioned case made clear, allegations of this kind are properly dealt with under the refusal to entertain portion of section 111(2)(k).

10. In the present case, it seems clear that the issue raised by the employer really amounts to an assertion that the Board should treat these two applicants as the same for the purpose of evaluating whether the Board should entertain the subsequent application. Accordingly, we have considered this limb of the employer’s argument in the context of the latter part of section 111(2)(k).

11. Whether the Board should exercise its discretion to refuse to entertain a subsequent application for certification by any applicant in respect of a bargaining unit whose members have, within the preceding year, been the subject of an unsuccessful application must be decided by reference, to the statutory purpose of the “bar” and “refusal to entertain” provision. Although that purpose may vary



depending upon the type of application involved, in the context of representation applications the purpose is “to provide a cooling off-period during which the employees may assess their position with respect to their desire to be represented by the applicant; or because the Board does not consider repetitious applications where the membership evidence has been fully tested to be in the interest of sound labour relations ...”: see *The Bristol Place Hotel*, [1979] OLRB Rep. June 486. The reason, one must assume, that a “cooling-off” period is necessary or that repetitious applications are not deemed to be in the interest of “sound labour relations” is because of the uncertainty and disruption generated in the workplace by an application for certification. These principles must be understood, of course, in the context of a legislative scheme which seeks to promote the free expression of employee wishes about trade union representation with as few limitations as possible.

12. In the context of applications for certification, and prior to the enactment of section 10(3), these competing considerations had been resolved by the Board exercising its discretion, pursuant to the first part of section 111(2)(k), to bar subsequent applications for certification by the same applicant for a period of six months. As previously indicated, however, and having regard to these same considerations, the Board defined its mandate under this part of section 111(2)(k) quite narrowly. It limited the meaning to be given to the phrase “unsuccessful applicant” to the same applicant or, in cases such as this, to the same trade union. It was only that union, whether it be a local, a national or an international, that the Board refused to allow a second opportunity to test employee wishes within the six month period. Although we have concluded that section 10(3) was not intended to alter the Board’s approach to different applicants, that does not mean that the Board will not undertake the kind of inquiry requested by the responding party in this case. The practical relationship between two separate entities may have some meaning to the outcome of an application for certification within the one year period identified in the latter part of section 111(2)(k). The question under this aspect of the provision, however, is whether, having regard to the competing statutory considerations identified above, the Board should refuse to entertain a subsequent application for certification by a legally different applicant within the one year period.

13. Given these considerations, we believe that the discretion granted by the “refusal to entertain” portion of section 111(2)(k) should be exercised, at least in cases involving a test of employee wishes, with reference to such factors as: the legal identity of the current applicant; the practical and legal relationships between the earlier and current applicants; the time at which the current application was made in relation to the expiry of the maximum one year period; the reason(s) for making the application at that time; and the number of other such applications that have been made within the twelve-month period. Applying these factors to the case at hand, we are satisfied that the Board quite properly entertained this application and that we ought not to refuse to give effect to the clear results of the representation vote. In coming to this conclusion, we are prepared to accept all of the findings of fact urged upon us by the employer, including the assertion that the filing of the application by Local 195 was motivated by a desire to avoid the effects of the bar imposed on the CAW-Canada. We accept, further, that in almost all material respects the application by Local 195 was filed on the strength of an ongoing organizing campaign run by the CAW-Canada, albeit with Local assistance. Consequently, it appears that the first time that employees may have become aware that the applicant would, in fact, be Local 195 rather than CAW-Canada was when they were presented with newly-minted membership cards bearing the Local 195 name. It also appears to be the case that, according to the Constitution of the CAW-Canada and the by-laws of Local 195, membership in the Local is membership in the National, the Constitution of the National is the Constitution of the Local, and that the by-laws of the Local are subordinate to the Constitution of the National. (As noted, however, it was not asserted that these factors made the two entities legally “the same”.) Finally, it appears that the reason the application was filed prior to the expiry of the 12 month period and by Local 195, was because the CAW-Canada became aware of a competing organizing campaign being run by the UAW that would likely result in

an application for certification that would have been entertained by the Board before the end of the one year period in which the CAW-Canada had continued to organize.

14. While these factors clearly demonstrate a close relationship between the two entities, the majority is satisfied that there would be no statutory purpose in refusing to entertain the application or in not giving effect to the results of the representation vote. An application for certification was filed by the UAW either on the same day or, perhaps, on the day before the Local 195 application. There is no question that this application would have been entertained by the Board and a vote conducted. In these circumstances, the only remaining issue was how many names would be on the ballot. Given the fact that a vote would have been held in any event, that more than ten months had elapsed from the date of the dismissal of the earlier application, that this ten month period was well into the maximum 12 month period during which the Board is given the discretion to refuse to entertain a subsequent application and exceeds the six month period which the Board had previously established for the pre-Bill 7 discretionary bar, we are satisfied that we ought not to refuse to entertain the application. In these circumstances, the addition of the Local 195 name to the ballot did nothing to compromise the concern for uncertainty and disruption underlying the bar or refusal to entertain provision while, at the same time, maximizing the competing consideration of employee choice.

15. Accordingly, the Board sees no reason to refuse to give effect to the results of the representation vote.

16. Further, and having regard to the agreement of the parties, the Board finds that:

all employees of Titan Tool & Die Limited in the City of Windsor save and except supervisors, persons above the rank of supervisor, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period,

constitute a unit of employees of the responding party appropriate for collective bargaining.

17. On the taking of the representation vote directed by the Board, more than fifty per cent of the ballots cast by employees in the bargaining unit were cast in favour of the applicant in Board File No. 2059-96-R. A certificate will issue to that applicant. Having regard to the results of the vote, the application for certification in Board File No. 2049-96-R is hereby dismissed.

18. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before the expiration of such 30-day period.

19. The responding party is directed to post copies of this decision immediately, adjacent to all copies of the "Notice of Vote and of Hearing" posted previously.

#### **DECISION OF BOARD MEMBER S. C. LAING; April 7, 1997**

1. I dissent from the majority decision which, with respect to my colleagues, fails to give any meaningful interpretation to the statutory bar imposed following an unsuccessful certification application.

2. The unique facts of this case cry out for a Board response which ought to clearly signal that technical maneuvering in an attempt to subvert the bar will not form the basis of a sound collective bargaining relationship and therefore, is not the type of activity the Board will sanction.

3. Although there is no question (on the Board's jurisprudence) that the CAW-Canada and the CAW Local 195 are separate entities - what is very questionable is their independence from one another.

4. The majority is seemingly unmoved by the facts which tie the two entities together. Indeed, it is undisputed that the employees of Titan Tool & Die will (with the majority's findings) become members of the barred national union during the time period in which a bar is imposed on them. Surely, this ought to cause the Board sufficient concern that it exercise its discretion under section 111(2)(k) of the Act and refuse to entertain the subsequent certification application, as it is in essence one made by the barred CAW-Canada, and I would so find.

**3472-95-G Carpenters & Allied Workers Local 27 United Brotherhood of Carpenters & Joiners of America, Applicant v. Toronto Dominion Bank, Responding Party**

**Construction Industry - Construction Industry Grievance - Damages - Remedies - Board earlier finding employer bound to collective agreement, but holding that union estopped from enforcing agreement in respect of certain business arrangements in place when Board's decision issued - Board rejecting employer's argument that estoppel applying to contract with carpentry sub-contractor entered into after date of Board's earlier decision**

**BEFORE:** *R. O. MacDowell*, Chair, and Board Members *R. M. Sloan* and *P. R. Seville*.

**APPEARANCES:** *Norman Jesin* for the applicant; *F. G. Hamilton* for the responding party.

**DECISION OF R. O. MacDOWELL, CHAIR, AND BOARD MEMBER P. R. SEVILLE;** March 5, 1997

## I

1. This is the referral of a grievance to arbitration, made pursuant to section 133 of the Labour Relations Act, 1995. Section 133 reads, in part, as follows:

**133.** (1) Despite the grievance and arbitration provisions in a collective agreement or deemed to be included in a collective agreement under section 48, a party to a collective agreement between an employer or employers' organization and a trade union or council of trade unions may refer a grievance concerning the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable, to the Board for final and binding determination.

(3) Upon a referral under subsection (1), the Board has exclusive jurisdiction to hear and determine the difference or allegation raised in the grievance referred to it, including any question as to whether the matter is arbitrable, and subsections 48(10) and (12) to (20) apply with necessary modifications to the Board and to the enforcement of the decision of the Board.

2. For ease of reference, the applicant in this matter will be referred to as "the Union" and the responding party will be referred to as "the Bank".

## II

3. This proceeding arises because the Union contends that the Bank has failed to comply with the terms of a collective agreement by which it is bound. Under the terms of that agreement, all carpentry work must be done by members of the Union - either by employing union members directly,



or by “sub-contracting” the carpentry work to businesses which have a collective bargaining relationship with the Union. The purpose of these clauses is to ensure that union members have access to emerging work opportunities that are within their trade and are controlled by the Bank.

4. The Union says that the Bank has failed to apply these terms of the collective agreement to certain carpentry work on a job site at Sheppard Avenue East in North York. The Union claims that this work was done by a non-union contractor and/or by persons who were not members of the union. The Union seeks compensation on behalf of the union members who, the Union says, should have been hired to work on the Sheppard Avenue job.

5. The Bank replies that it was not obliged to apply the terms of the collective agreement to this job because of the decision of the Board in Board File 3178-91-G released on May 3, 1995 (“the Davie decision” - which is now reported as *United Brotherhood of Carpenters and Joiners of America Local 785 vs. Toronto Dominion Bank*, [1995] OLRB Rep. May 686).

6. Board File 3178-91-G was an application much like the present one. There, as here, the Union claimed that certain carpentry work done in bank branches should have been done by “union carpenters”; and there, as here, the Bank resisted that claim. However, after hearing the parties’ evidence and representations, the Board dismissed the Union’s grievance. The Board confirmed that the Bank was bound by the Carpenters’ provincial collective agreement, but, the Board went on to say that the Union was estopped from enforcing the terms of that agreement in respect of both the carpentry work completed prior to the issuance of the Board’s decision (the “Davie decision”), and certain business arrangements for the performance of carpentry work that were already in place when the decision was issued (i.e. on May 3, 1995).

7. The Bank maintains that the present grievance relates to one of the “excluded business arrangements” identified in the Davie decision - that is, that the “estoppel” found in the Davie decision also applies to the carpentry work done on the Sheppard Avenue project, so that the Bank was not obliged to employ union members or engage a unionized contractor to perform that work. The Bank urges the Board to dismiss this grievance on the same basis as the “Davie panel” dismissed the grievance before it.

8. In view of this linkage with the decision of the “Davie panel”, it may be useful to sketch in some background (which is also recorded in two other Board decisions which will be mentioned briefly below).

### III

9. The main business of the Bank is, of course, “banking”; but, from time to time the Bank is also involved in the construction or renovation of buildings that are, or will become, bank branches. Those “construction activities” are undertaken either by the Bank’s own employees, or by the employees of “sub-contractors” engaged by the Bank to do this work.

10. In 1976 and 1978 the Bank was apparently using its own employees to do certain carpentry work in Western Ontario. Those bank employees were (or became) members of the Carpenters’ union, which applied to the Board for certification as their bargaining agent. In 1976 the Board certified the Union as the bargaining agent for a bargaining unit encompassing “carpenters and carpenters’ apprentices in the employ of the Toronto Dominion Bank forces (Premises Division) in the County of Wellington”. In 1978 the Union was certified to represent a bargaining unit of “carpenter and carpenters’ apprentices in the employ of Toronto Division Bank forces (Premises Division) in the Counties of Brant and Norfolk”. In neither case was there any challenge to the application of the Labour Relations Act to these employees, or to the Board’s jurisdiction to grant these certificates.

11. By the late 1970s, then, the Union had acquired some geographically-defined bargaining rights in Western Ontario. However, in 1978 these "local" bargaining rights were extended province-wide, by operation of law, when the Legislature imposed the present system of province-wide bargaining in certain sectors of the construction industry. However, it seems that for a number of years the Bank did not seek to assert its now province-wide bargaining rights, nor did the union actively enforce the terms of the provincial collective agreement. This inactivity provided the basis for a number of arguments that were ultimately raised before the "Davie panel" in Board File 3178-91-G.

12. The application in Board File 3178-91-G was filed on January 7, 1992, and as we have already noted, involved a complaint by the union that certain carpentry work in Bank branches was being done by persons who were not union members. The Union asserted that this situation was contrary to the terms of the collective agreement. However, the Bank raised a number of defences to the Union's claim - including the argument that the original certificates were void because, as a matter of constitutional law, the Labour Relations Act could not apply to this aspect of the Bank's business.

13. Briefly put, the Bank asserted that its construction activities were an integral component of its federally-regulated undertaking (i.e. its banking operations) and that, accordingly, any associated employment relationships were subject to federal - not provincial - regulation. The Bank asserted that only the federal Parliament could regulate "banks and banking", and that the "construction arm" of its operation fell within those parameters. In the Bank's submission, its operations were not covered by the Ontario Labour Relations Act, so there was no foundation for bargaining rights or a collective agreement.

14. It is unnecessary to review this "constitutional argument" in any further detail. It suffices to say that the initial panel hearing the case rejected the Bank's argument in a decision dated October 30, 1992 ("the Bloch decision"). The Board held that the Bank's construction activities were incidental to its banking operations and, thus, were subject to provincial - not federal - regulation. The Board concluded that there was no defect in the original certification process. And since the Labour Relations Act was applicable, the Board had jurisdiction to determine whether or not the Bank was obliged to abide by the terms of the collective agreement in the circumstances raised in the referral to arbitration.

15. There followed a protracted legal challenge to the Board's decision on this "constitutional issue". The arbitration proceeding was held in abeyance pending the conclusion of the Court proceedings.

16. The Bank's application for judicial review was dismissed by the Divisional Court on March 17, 1993. A motion for leave to appeal to the Ontario Court of Appeal was dismissed by the Court of Appeal on June 14, 1993. A further motion for leave to appeal was dismissed by the Supreme Court of Canada on January 17, 1994.

17. Following the completion of these constitutional challenges, the matter was re-listed for hearing before a differently-constituted panel of the Board (the "Davie panel").

18. The issues raised before the new panel are canvassed at some length in the "Davie decision" dated May 1, 1995, and, again, need not be repeated here in any detail. It is sufficient to note that, among other things, the Bank argued that:

- (1) because of the union's activity it had abandoned its bargaining rights, so that neither the original certificate nor the collective agreement were of any current legal force or effect; and in the alternative that ....
- (2) because of the Union's activity, the Union was estopped from enforcing

the terms of the collective agreement in respect of the work to which the grievance applied.

If the abandonment argument were accepted, there would be no collective agreement or collective bargaining rights as between the Union and the Bank. If the estoppel argument were accepted, the collective bargaining relationship would continue, but the Union would be prevented from demanding compliance with the Agreement until the “estoppel” was brought to an end.

19. After considering the parties’ submissions, the “Davie panel” found at paragraphs 55-69 that the Union had not abandoned its bargaining rights. The Board held that the Union’s dilatory conduct was not sufficient to completely nullify the collective bargaining relationship and the collective agreement based upon it. However, the Board substantially accepted the Bank’s estoppel argument, in a long passage to which we might usefully refer:

91. Insofar as estoppel and the Bank’s construction activities through the use of outside contractors is concerned, however, the issue is complex. For nearly fifteen years the Bank has contracted out a portion of its construction activities to outside contractors. As a result of the union’s conduct as noted herein, when it contracted out work the Bank did not consider the union affiliation of those with whom it contracted. In letting out construction contracts, the Bank was motivated by business considerations and not the union affiliation of the contractor engaged. The union now seeks to strictly enforce the collective agreement with the obvious result that union affiliation of those with whom the Bank contracts would become a prime consideration.

92. Over the past fifteen years the Bank developed its methods of performing its construction work, let out contracts, established and terminated relationships, while the union silently stood by without any communication to the Bank that its conduct was inconsistent with its obligations to recognize the bargaining rights held by the trade union. That the Bank acted differently because of the union’s conduct and fifteen year silence is beyond doubt. The union now seeks to alter that state of affairs. In our view the union may do so only upon the giving of reasonable notice, that is to say, notice which takes into account the reliance interests of the Bank and which provides to the Bank an opportunity to return to the position it was in when the union exerted its bargaining rights.

93. The union argues that such notice was given when this grievance was filed and that the estoppel was brought to an end at that time. It asserts that with the filing of this grievance the Bank was put on notice that the union was asserting its bargaining rights and sought to enforce all of the collective agreement obligations. From that point forward the Bank knew that its future construction activities could be affected by that assertion of bargaining rights and enforcement of collective agreement obligations.

94. We have determined that, in the face of a fifteen year silence by the union, the Bank need not have altered the manner in which it had conducted its construction activities merely because it received notice of a grievance.

95. In the result we have decided that the requisite notice which brings to an end the estoppel and which appropriately considers the past reliance of the Bank comes with the issuance of this decision. The estoppel therefore does not apply to contracts entered into after this date. With this decision the Bank knows that the union is asserting its bargaining rights and intends to enforce those bargaining rights. As a result of this decision the Bank also knows that its arguments of abandonment have not been accepted, it is required to recognize the union and comply with all of the provisions of the collective agreement including the sub-contracting provisions. It knows that any future dealings with outside contractors will be affected by those bargaining rights and can govern itself accordingly (see also for example *Aluma Systems Canada Inc.*, [1994] OLRB Rep. Nov. 1469).

96. We recognize that this grievance was filed in January 1993 and that the Bank may have engaged in construction activities in the intervening two year period in contravention of the terms of the ICI provincial agreement. Our decision with respect to the estoppel and the appropriate notice required to end such an estoppel should not be taken as a signal that the Board will always bring the estoppel to an end with the issuance of its decision. In this regard, we are particularly concerned that parties may engage in lengthy, protracted and unnecessary litigation in an effort to prolong the period



during which the estoppel runs. That is neither the purpose nor the intended result of this determination. Rather it must be remembered that estoppel is an equitable concept used by courts and administrative tribunals alike to fashion fair and appropriate remedies which take into account all the facts and circumstances. In this case the Bank has pursued a compelling and meritorious position which ultimately was rejected by the Board. The time which has elapsed since the filing of this grievance and the issuance of this decision has been the result (in large part) of the pursuit of legal avenues, and there is nothing to suggest that either party deliberately delayed matters. In other less compelling circumstances, or where the Board considers the delay to be the fault or responsibility of one of the parties, the Board may find that an equitable balancing of the facts results in the estoppel coming to an end with the filing of the grievance as it did in *KNK*, supra. Alternatively, an equitable balancing of the facts and circumstances may, in appropriate cases, cause the Board to conclude that the estoppel should run for some time beyond the issuance of its decision. Each case must be determined on its own particular facts.

97. In the result we declare that the Bank is bound to recognize the bargaining rights of the Carpenters and is bound to the existing provincial collective agreement between the Carpenters Employer and Employee Bargaining Agencies. This grievance however is dismissed.

[emphasis added]

20. In reaching this conclusion, the Board recognized that as early as January 1992 the Union had challenged the Bank's position by filing a grievance. The Board also recognized that the 1992 grievance put the Bank on notice that the Union was asserting its collective agreement rights (if any) so that, when the Bank ignored the Agreement between 1992 and 1995, the Bank was taking a risk that its legal positions would not ultimately prevail. And the Board noted that in a contractual regime, notice of intent to return to one's strict legal rights (here by filing the grievance in January 1992) is often sufficient to bring an estoppel to an end, because, thereafter, a party can no longer claim detrimental reliance based upon a representation that legal rights will not be enforced. In summary, the Board acknowledged that there is a respectable body of arbitration decisions to this effect, so that when the Bank continued to ignore the collective agreement after the grievance was filed, the Bank was running the risk that it would not escape liability for that decision. Nevertheless, in all the circumstances, the Board considered it appropriate to preclude the Union from insisting on the employee's collective agreement rights until the issuance of the Board decision on May 3, 1995. To repeat, the Board held:

"the estoppel therefore does not apply to contracts entered into after [May 3, 1995]".

Contracts for construction work entered into prior to May 3, 1995, did not have to comply with the terms of the collective agreement. Contracts entered into after May 3, 1995, did have to comply with the collective agreement.

21. The Davie decision was also the subject of an application for judicial review, which came on for hearing before the Divisional Court on October 22, 1996. The Bank's application for judicial review was dismissed with the following endorsement:

"This application is dismissed. The Applicant, T.D. Bank, seeks judicial review of the decision of the OLRB holding that the Union had not abandoned its bargaining rights with the T.D. Bank. In paragraph 55 to paragraph 59 (inclusive) of the Reasons, the OLRB found that the evidence before it did not reach the necessary plateau to find "abandonment". The Board went on to hold that the evidence did justify a finding of estoppel to the date of its decision. Mr. Morphy [counsel for the Bank] submitted that the OLRB's decision must be correct, otherwise the Board had no jurisdiction. Assuming that is the benchmark, we find that it has been met. ...."

In the Court's view, therefore, the Davie panel was "correct" - both with respect to the "abandonment issue" and with respect to the "estoppel question". The Court found no fault with the Davie panel's decision to relieve the Bank of its collective agreement obligations for contracts for construction work

entered into prior to May 3, 1995, but, by the same token, to hold the Bank to the collective agreement terms for contracts entered into after May 3, 1995.

22. The Davie panel was obviously concerned that the Bank should not be put in a position where complying with the terms of the collective agreement would require it to abrogate existing commercial contracts. The Board was not anxious to put the Bank in a position where it would face competing but irreconcilable legal claims. The Board used the equitable doctrine of estoppel to extricate the Bank from this predicament, and held that the Bank only had to apply the terms of the collective agreement for contracts (for construction work) entered into after May 3, 1995 (the date the Board decision issued).

23. But what of ongoing negotiations or business arrangements for the performance of carpentry work that had not yet crystallised into a "formal contract" by the time the Davie decision was issued on May 3, 1996, and from which the Bank could therefore withdraw without facing a breach of contract action for damages? Were these business arrangements "caught" by the estoppel too? That is a question addressed in yet another case: *United Brotherhood of Carpenters & Joiners of America, Local Union 2050 vs. Toronto Dominion Bank*, Board File 2320-95-G filed with the Board on September 14, 1995 and decided by the "Joachim panel" on December 12, 1995.

24. Board File 2320-95-G involved the same parties (the Carpenters' Union, the T.D. Bank, the provincial collective agreement) and the same kind of claim: that certain carpentry work done in Bank branches should have been performed by union members pursuant to the terms of the collective agreement. It was a case like the present one in which the bidding process had begun before May 3, 1995, but had not culminated in a formal commercial contract by the time the Davie decision was issued. The question then became: Is this work caught by the estoppel defence or not? In effect, the new panel in Board File 2320-95-G (the Joachim panel) was being asked to reconsider or clarify the application of the "estoppel" found in the Davie decision reproduced above.

25. In this case, though, the Board accepted the Union's position that estoppel did not apply. The Board held that the Davie decision was clear and that the Bank was obliged to apply the terms of the collective agreement to its carpentry work unless it had already entered into a binding commercial contract for such work prior to May 3, 1995. At paragraph 28 the Board commented:

28. .... In the TD Bank case the Board [the Davie panel] drew a clear line to establish when, in its view, it was fair to end the estoppel. It drew that line at the point when the Bank entered into a contract, after May 3, 1995. In our view that line is a reasonable and appropriate one. With respect to any contracts entered into after May 3, 1995 the Bank was in a position to comply with the term of the Carpenters Provincial Agreement. We reject the Bank's argument that it could not or should not be expected to interrupt its bidding process. There is no compelling reason why it cannot do so. The Bank's own instruction to bidders states that the Bank may decide to reject any or all of the bids tendered.

And at paragraph 25 the Board observed:

The Bank does not bid on projects, rather it accepts bids. The prejudice to the Bank arises at the time the Bank enters into a contract, the timing of which is entirely within its own control. The Bank does not suffer any significant prejudice in interrupting the bidding process.

26. In the opinion of the "Joachim panel" the key question was whether the Bank could extricate itself from these business dealings so as to comply with its collective agreement obligation - that is, whether the Bank could avoid the competing legal claim that troubled the Davie panel. As long as the Bank was not contractually bound to a particular course of action by May 3, 1995, it could rearrange its affairs, and there was nothing inequitable in holding the Bank to its prior collective agreement obligations - even if that required the Bank to re-open the bidding and re-tender the work. To put the

matter another way: the Joachim panel was of the view that the estoppel described in the Davie decision (see above) did not apply unless the dealings by which a contractor was selected had progressed to the stage of an actual contract for the work in dispute.

27. With this background, then, we turn to the facts in the instant case. These facts are not substantially in dispute. But the parties do disagree about how the facts should be characterized, and how the facts fit within the framework established by the Davie decision and by the Joachim decision.

28. The Board's information about the Sheppard Avenue job was provided by Nick Lamb, a Real Estate Operations Officer for the Bank.

#### IV

29. Mr. Lamb testified that the project on Sheppard Avenue East was done by a private firm which obtained the work by competitive bidding. He explained that in selecting the contractor to whom the work will be awarded, the Bank takes into account such factors as: the bid price; the apparent reliability of the firm; whether the Bank has dealt with the firm before; and whether the firm was itself a customer of the Bank. And, of course, to the extent that the collective agreement applies, the Bank must also take into account whether the subcontractor is "unionized".

30. In this instance, the project involved the relocation of an existing branch from 187 Sheppard Avenue East to new premises across the street at 280 Sheppard Avenue East. The new branch was going to be larger, have better parking arrangements, and provide various services and facilities that had not been available at the smaller location. The objective was to have an "Asian focus" so as to attract new clientele from the growing Asian market in the area, and by early 1995, the relocation (and its overall budget) had received head office approval. There was some urgency to complete the move because the Bank had already leased the new premises, and its existing branch was clearly inadequate.

31. By mid-March 1995 drawings and plans had been completed, and on March 22, 1995, a number of construction companies were invited to submit bids. The invitation to tender included the following stipulations:

- 1.1 The intent of this bid call is to solicit and receive formal offers to perform the work acquired by the Bid Document ("the work").
- 2.1 Submission of a bid will be considered an agreement by the bidder to execute the Canadian Standard Construction Document for Stipulated Price contract, CCDC2-182..... within fifteen (15) days after delivery of CCDC2-1982 to him for execution.
- 7.5 The lowest, or any bid, will not necessarily be accepted, and the Owner [the "Bank"] reserves the right to reject any and all bids.
- 8.2 The Owner reserves the right to negotiate contract terms with a potentially acceptable bidder.

[emphasis added]

As will be seen, the bidder is obliged to enter into a contract in a particular form after the successful firm is selected; however, the terms of that contract are to be worked out later, and the Bank is not required to accept the lowest bid. For present purposes, it is important to note that the selection of the successful bidder is distinct from the subsequent contract by which the work is performed.

32. The closing date for bids was initially fixed at April 12, 1995. It was later extended to April 24, 1995, because there had been some changes in the work specifications. There were five companies "in the running" and, as it turned out, the bids of the top three companies ranged from \$340,000 to



\$360,000. There is no evidence that any of these companies were “unionized”, nor is there any evidence that the Bank considered itself obliged to apply the terms of the Carpenters’ provincial collective agreement. (By this time the Union’s case in File 3178-91-G had returned from the Courts and had been argued before the “Davie panel”, but that panel had not yet issued its decision, so the Bank would have been aware that it faced at least some risk that its abandonment and estoppel arguments might not be successful.)

33. On April 26, 1995, Mr. Lamb prepared a memo for D. Moore, the Bank’s Vice-President of Corporate Real Estate Operations. The memo reads, in part:

“This project was tendered to five customer contractors by Toronto Division Real Estate Operations and we recommend awarding the contract to the low bidder Classic Construction Company”.

[emphasis added]

The memo includes information about the five bidders, and notes that it is important to expedite completion of the project because the existing lease at 187 Sheppard Avenue expires September 30, 1995. The memo concludes:

“We would appreciate receiving your approval and/or comment.

Thank you for your assistance and we look forward to receiving your approval.”

34. Mr. Lamb testified that Classic Construction Company was the lowest bidder and was thought to be reliable because the company had recently been formed by Allan Blake, a former employee in the Bank’s own construction division. That is why Mr. Lamb was recommending that Classic be awarded the job.

35. Once the bids had been examined and the selection made, Mr. Lamb told Mr. Blake that he (Lamb) was recommending that Classic be given the job and that, accordingly, Mr. Blake should begin “gearing up” for the project and preparing the necessary paperwork. Mr. Lamb told Mr. Blake that as soon as he received head office approval, a formal contract could be concluded. As far as Mr. Lamb was concerned, such approval was a “rubber stamp” because his recommendations were routinely accepted; moreover, there was no doubt that the project would go ahead because of the time pressures mentioned above. On the other hand, Mr. Lamb conceded that head office had the authority to withhold approval or reject his recommendation. Mr. Lamb also conceded that:

- no commercial contracts could be concluded and no work could be undertaken until head office approval was obtained; and
- no contract is ever signed without head office approval.

36. It is pretty clear that, from Mr. Lamb’s perspective, he did not consider the Bank legally bound to have Classic do the work until head office approved and a formal contract had been executed. In other words, prior to final approval, Classic could not require the Bank to follow through nor seek damages if it did not. Indeed, we suspect that the Bank itself might be surprised by a ruling that it had enforceable legal obligations at that stage of the process. Be that as it may, Mr. Lamb testified that he told Mr. Blake that a formal contract would follow head office approval.

37. Early in May, there were further discussions between Mr. Lamb and Mr. Blake about the upcoming job and, as a result of those discussions, it was agreed that certain portions of the work would be done by someone else. Mr. Lamb explained that these variations were minor ones, and that they were not significant enough to require a new tender. Mr. Blake was agreeable to the proposed changes to the content of the job.

38. On May 15, 1995, Mr. Lamb received head office approval to proceed with the project along the lines earlier recommended. On May 17, 1995, the Bank entered into a contract with Classic Construction to perform work at 280 Sheppard Avenue beginning on June 1, 1995. The document is executed by Mr. Lamb on behalf of the Bank, and by Allan Blake, President of Classic Construction Company, a Division of 1093079 Ontario Ltd. The contract incorporates the "standard form" covenants mentioned in the bidding document, as well as a description of the work to be done. Among those contract terms is this one:

"The contract supersedes all prior negotiations, representations, or agreements, either written or oral, including the bidding document. The contract may be amended only as provided in the General Conditions of the Contract."

This is the contract which governed the performance of work on the Sheppard Avenue project.

\* \* \* \* \*

39. The Union claims that the work done on Sheppard Avenue pursuant to this commercial contract should have been done in a way that was in compliance with the Bank's obligations under the collective agreement.

40. We agree.

41. In the first place, we do not think that as of May 3, 1995 (when the Davie decision was issued), the Bank was under any enforceable legal obligation to have the work done by Classic. Mr. Lamb was not prepared to say that there was a binding contract in existence prior to head office approval, and he had specifically told Mr. Blake that a contract would not be entered into until after such approval had been obtained. While there was obviously an expectation that a commercial contract would be consummated on appropriate terms, that did not actually happen until May 17, 1995; moreover, it is the May 17th document which established the "contract" pursuant to which the work was performed. And by May 4, 1995, the Davie decision had been received by the Bank, and the Bank was aware (or should have been aware) that any new subcontracting arrangements pertaining to carpentry work would have to be congruent with the Bank's obligations under the collective agreement.

42. We find that as of May 3, 1995 there was no "contract" for carpentry work as that term is used in the Davie decision.

43. One can appreciate why the Bank might not want to re-tender the job, or take other steps to ensure that its commercial contract with Classic conformed to its collective agreement obligations. By that time, there was commercial pressure to get the job done quickly and a satisfactory sub-contractor had been selected. However, in our view, what the Bank's argument boils down to, is a quarrel with the line drawn by the Davie panel, and a request that this panel of the Board extend the estoppel further, to cover commercial dealings and expectations that had not produced a formal "contract" as at May 3, 1995. Moreover, since the case was fully argued before the Davie panel in November 1994, the Bank must have been aware that it was taking a risk in April 1995 by disregarding the terms of the collective agreement. Indeed, from at least 1992, and certainly by late 1994, the Bank knew that it might not win its legal argument and that it might be obliged to apply the terms of the collective agreement and pay whatever damages arose from not having done so.

44. The point is: the Davie panel had to determine the duration of the estoppel which it found to be operating and it held that:

"the estoppel therefore does not apply to contracts entered into after this date [May 3, 1995]"

The Davie panel might have determined a different cut-off point; but after weighing the equities, it ended the estoppel as at May 3, 1995, so that any contracts after that date had to be congruent with the Bank's collective agreement obligations. To put the matter another way: the Bank was relieved from its collective agreement obligations from 1992 to May 3, 1995, but not thereafter.

45. We are not inclined to reconsider or revise the estoppel determination of the Davie panel. The contract with Classic Construction (by which carpentry work was done on the Sheppard Avenue project) was entered into on May 17, 1995 - which is after the issuance of the Davie decision, and is therefore outside the ambit of the estoppel found to be operable as between the parties in this proceeding.

46. It follows that the Bank was obliged to apply the terms of the Carpenters' collective agreement to the work done on the Sheppard Avenue project and that a failure to do so gives rise to a claim for damages in respect of work that should have been done by union members, but was not.

47. For the foregoing reasons, we find that the Union is NOT estopped from asserting the claim identified in this grievance. However, the Board heard no evidence about the dimensions of such claim or the amount of compensation to which the Union and/or its out-of-work members may be entitled. The matter is therefore referred back to the parties for further consideration so that they may consider the possibility of settlement without further litigation.

48. In the event that the matter is not settled, it may be re-listed for hearing at the request of either of the parties.

49. This panel is not seized.

#### **DECISION OF BOARD MEMBER R. M. SLOAN; March 5, 1997**

1. I dissent.

2. This case is not a civil dispute between The Toronto-Dominion Bank and Classic Construction as to whether or not the arrangement entered into between them is "... a binding legal contract ..." or whether it represents "... enforceable legal obligations ...."

3. Both the TD Bank and Classic Construction recognize and agree that under the labour relations realities and long-standing entrenched and accepted practices in the Ontario Construction Industry, a contract existed between them prior to May 3, 1995 for the subject construction work at 280 Sheppard Avenue East.

4. As alluded to earlier, we are not dealing here with a legal dispute before the Courts between the two contracting parties, but with a grievance filed by the union under the Construction Industry provisions of the Ontario Labour Relations Act - and it behooves the Board to recognize this distinction and deal with the issue on the basis of the applicable historical and current practices, and labour relations realities.

5. There is no question, in my view, that for the purposes of the Davie decision a contract was in existence between the TD Bank and Classic Construction prior to May 3, 1995.

6. The majority decision applies, in my view, much too narrow and legalistic a meaning to the term contract - one which I feel certain would not be supported nor was intended by the Davie decision.



7. The commercial realities in the construction industry dictate that for the system to work at all both parties - "owners" and contractors - have to operate in an atmosphere of trust where the "word" of the parties is "their bond".

8. Contracts are let and the commencement of work authorized, not on the basis of formal, written, signed, enforceable documents, but by: a simple verbal understanding; a handshake; handwritten notes; purchase orders; or other informal means.

9. It is my understanding that the instances in the construction industry where a formal written contract is entered into before the contract is awarded and work commences are few and far between in the overall scheme of things.

10. If the requirement for such legalistic practices became the norm, then work in the industry would grind to a halt.

11. Prior to May 3, 1995 a contract by any definition existed between the TD Bank and Classic Construction.

- The TD Bank had authorized and allocated funds for the project.
- The TD Bank had obtained the required building permits.
- The TD Bank had informed Classic Construction that they were the successful bidder and had instructed them to gear up for quick action to meet a tight deadline.

12. In summary, prior to May 3, 1995, a contract for purposes of the Davie decision was in effect between the TD Bank and Classic Construction, and I would therefore dismiss this instant grievance.

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**3759-96-R Canadian Health Care Workers (C.H.C.W.), Applicant v. Trinity Village Care Center, Responding Party v. London & District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C., Intervenor**

**Certification - Hospital Labour Disputes Arbitration Act - Timeliness - Incumbent union and employer subject to provisions of Hospital Labour Disputes Arbitration Act - Raiding union filing certification application almost two years after expiry of most recent collective agreement, 19 months after appointment of conciliation officer and 17 months after Minister of Labour advising employer and incumbent union that conciliation officer had reported that the parties had been unable to effect collective agreement - Application dismissed as untimely**

**BEFORE:** *Russell G. Goodfellow*, Vice-Chair, and Board Members *J. A. Ronson* and *H. Peacock*.

**DECISION OF THE BOARD;** March 11, 1997

1. This is the continuation of an application for certification. By decision dated February 19, 1997, a different panel of the Board indicated "that the application may well be untimely". Accordingly, the Board directed the parties to file submissions on this issue. Those submissions have now been received.

2. The application for certification was filed on February 14, 1997. The most recent collective agreement between the responding party and the intervenor expired on March 31, 1995. An application for conciliation was made on July 28, 1995. A conciliation officer was subsequently appointed. On September 22, 1995, the Minister of Labour informed the parties that the conciliation officer had reported that the parties had been unable to effect a collective agreement. There is no assertion that any collective agreement was subsequently entered into. Indeed, it appears that the parties are now in the process of constituting an interest arbitration panel.

3. The responding party and intervenor are subject to the provisions of The Hospital Labour Disputes Arbitration Act. Section 12(2) of the Act states:

12(2) Despite section 67 of the Labour Relations Act, 1995 where notice has been given under section 59 of the Act by or to a trade union that is the bargaining agent for a bargaining unit of employees of a hospital to or by the employer of such employees and the Minister has appointed a conciliation officer, an application for certification of a bargaining agent of any of the employees of the hospital in the bargaining unit defined in the collective agreement or an application for a declaration that the trade union that was a party to the collective agreement no longer represents the employees in the bargaining unit defined in the agreement shall not be made after the day upon which the agreement ceased to operate or the day upon which the Minister appointed a conciliation officer, whichever is later, except in accordance with section 7 or subsection 63(2) of the Labour Relations Act, 1995.

4. Section 7(4) of the Labour Relations Act, 1995 states:

7(4) Where a collective agreement is for a term of not more than three years, a trade union may apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the last two months of its operation.

The effect of these provisions is to provide a minimum two month "open period" immediately prior to the expiry of the collective agreement. However, that period closes either upon the date that the agreement expires or when a conciliation officer is appointed, whichever comes later. In this case, the agreement expired in March 1995 and a conciliation officer was appointed in July or August, 1995. As no subsequent agreement has been entered into, the application is untimely and is, therefore, dismissed.

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## COURT PROCEEDINGS

**1831-96-R (Court File No. 32/97) Michael Bauer, Applicant v. Ontario Labour Relations Board, International Brotherhood of Electrical Workers, Local 353, and B & B Electric Company Division of Electrobauer Systems Limited, Respondents**

**Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is "employee" within the meaning of the Act (despite parties' agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for**

individual to assert that he was “employee” - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Objecting individual seeking judicial review and filing three affidavits in support of application - Motions’ court judge holding affidavits inadmissible and ordering them struck out

Board decision reported at [1996] OLRB Rep. Nov./Dec. 907.

Ontario Court (General Division) Divisional Court, McFarland J., March 11, 1997.

**MacFarland J. (endorsement):** The three impugned affidavits should be struck out. There is no issue raised in any of them which goes to the jurisdiction of the OLRB - a matter does not become an issue of jurisdiction just because a party says it does. These affidavits merely augment and try to add to the evidence which the Board considered or raise factual issues which were not before the Board but could have been or which have arisen since the Board’s determination. In my view this is a clear case where the affidavit evidence sought to be introduced is improper in accordance with the principals established by our own Court of Appeal in the Keeprite decision. By the same token those portions of the revised factum which rely on the impugned affidavits which I have ordered be struck out, should also be struck out. Counsel should attempt to agree on what those paragraphs are before the judicial review application comes on for hearing on March 17 next. Costs of this application are fixed in the sum of \$1,000.00 to be paid by the applicant on the judicial review to the respondent union at the conclusion of the judicial review application. The OLRB does not seek costs and none are awarded.

**1831-96-R (Court File No. 32/97)** Michael Bauer, Applicant v. Ontario Labour Relations Board, International Brotherhood of Electrical Workers, Local 353, and **B & B Electric Company Division of Electrobauer Systems Limited**, Respondents

Certification - Construction Industry - Employee - Judicial Review - Natural Justice - Reconsideration - Representation Vote - Settlement - Stay - Timeliness - Union applying for certification under section 11 of the Act, but subsequently entering into settlement with employer agreeing to representation vote and to list of eligible voters - Majority of employees casting ballots in favour of union representation - Individual seeking reconsideration of decision ordering vote and alleging that he is “employee” within the meaning of the Act (despite parties’ agreement) in the bargaining unit and that he had no notice of the certification proceedings (including the vote) - Board deciding that individual had reasonable opportunity to see relevant notices and decisions that had been posted in workplace by direction of the Board - Individual therefore deemed to have received actual notice of proceedings - Board also deciding that it was too late for individual to assert that he was “employee” - Employer requesting reconsideration on ground that union had delivered the wrong forms to employer when it first delivered application material - Employer also asserting that Labour Relations Officer misled it, that because employer was not represented by counsel at settlement meeting, and that settlement was made through inequality of bargaining power and undue influence - Reconsideration applications dismissed - Certificates issuing - Application for judicial review brought by objecting individual dismissed by Divisional Court

Board decision reported at [1996] OLRB Rep. Nov/Dec. 907.



Ontario Court (General Division) Divisional Court, Coe, Matlow and Adams JJ., March 17, 1997.

**Adams J. (Orally):** This is an application for judicial review, seeking to set aside the decisions of the Ontario Labour Relations Board dated October 28th and December 4th, 1996 and the certificate issued by the Ontario Labour Relations Board dated December 4th, 1996.

The Applicant submits that the Board determined an issue of credibility without affording him an oral hearing, and that an oral hearing ought to have been held on the adequacy of the posting of the application for certification. It would also appear to be the applicant's position that he was entitled to an oral hearing in connection with his application for reconsideration. Finally, the applicant submits the application's fundamental character changed after the October 21, 1996 settlement requiring a reposting.

We are all of the view this application for judicial review is without merit. The Board was dealing with an application for certification in the construction industry. This statute, because of the nature of labour relations matters, provides for notice by way of conspicuous postings on premises, which the Board considers necessary to bring to the attention of persons in connection with any proceeding before the Board. The uncontested evidence before the Board was that this applicant frequented the location of the postings three to four times per week, but on occasion would attend at the office only once a week and that these attendances would last between twenty to sixty minutes. On this evidence it was neither erroneous nor patently unreasonable for the Board to conclude, in the alternative, that the applicant had adequate notice of the application including the October 21, 1996 settlement conference which culminated in the November 1, 1996 representation vote. An application for certification and its administration are at the heart of the Board's jurisdiction. We can find no error in the Board relying on the adequacy of the challenged postings both before and after October 21, 1996 and dismissing the application for reconsideration. Nor can we find error in the Board dismissing the application for reconsideration without an oral hearing. In our view all of the facts supporting the application for reconsideration were before the Board. The request, we emphasize, was not an original proceeding to which the mandatory oral provisions of the Statutory Powers Procedure Act might apply. Finally, we reject the submission that the application's fundamental character changed upon the union agreeing to a representation vote. It began as an application for certification and remained such an application. This application is therefore dismissed.

The union is entitled to costs which we are prepared to fix, in all the circumstances of this particular case, in the sum of \$3,500.00 and we are prepared to direct that those costs be payable jointly and severally by both the applicant and the supporting company.

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**1784-95-R; 1786-95-U (Court File No. 543/96) Burlington Golf & Country Club Limited, Applicant v. Canadian Union of Operating Engineers and General Workers and the Ontario Labour Relations Board, Respondents**

**Certification - Certification Where Act Contravened - Discharge - Discharge for Union Activity - Interference in Trade Unions - Judicial Review - Unfair Labour Practice - Board finding that employer violated the Act in promoting an employee association in the face of the union organizing campaign and in indefinitely suspending the lead inside union organizer - Board certifying union under section 11(1) of the Act - Application for judicial review dismissed by Divisional Court**

Board decision reported at [1996] OLRB Rep. July/August 505.

Ontario Court (General Division), Divisional Court, Coe, Adams and Matlow JJ., April 2, 1997.

**Adams J. (Endorsement):** This is an application for judicial review of a decision of the Ontario Labour Relations Board ("the Board") certifying the respondent trade union as the exclusive bargaining agent for a bargaining unit of the applicant employer's employees found by the Board to be appropriate for collective bargaining. The trade union had applied for certification in August, 1995 and filed membership evidence for less than 55% of the employees in the bargaining unit but more than 40%. Under the provisions of The Labour Relations Act at that time, the Board would be obligated to order a representation vote subject to subsection 9(2) which provided:

If the Board considers that the true wishes of the employees of an employer...are not likely to be ascertained because the employer...has contravened this Act, the Board may, on application of the trade union, certify the trade union...

and in this particular case the trade union applied to be certified pursuant to subsection 9(2). Therefore, as has been the Board's practice since the inception of this provision, the Board deferred the taking of a representation vote while it inquired into the unfair labour practice allegations of the trade union. Hearings were held for four days in August and October, 1995. Thereafter, the Board reserved its decision.

In November 1995 the Legislature enacted significant amendments to the Labour Relations Act, the most significant being a move from "card-based" to "vote-base" certification. The new Act requires the Board to hold a representation vote "within five days ...after the certification application is filed with the Board" unless the Board directs otherwise. The relevant transitional provision is section 3 which applies the new Act to proceedings commenced under the old Act in which a final decision has not issued with the exception of certification applications made before October 4, 1995 and in respect of which the Board is directed to apply sections 5, 8, 9 and 9.1 of the old Act and not sections 7, 8 and 10 of the new Act.

The Board took submissions on the effect of the new Act and the transitional provision on the application. These submissions focused on whether old subsection 9.2 applied, as argued for by the trade union, or whether new section 11 applied with its substantially different wording as contended for by the employer. The Board effectively accepted the employer's submission but concluded that, in light of the unfair labour practices found to have been committed by the employer, the trade union should be certified pursuant to section 11 without the intervention of a representation vote. The Board was clear in finding that, on the evidence before it, a representation vote would not likely reflect the true wishes of the employees and that, in its opinion, no other remedy would be sufficient to counter the effects of the contravention.

Before this court, the employer argued that the Board declined its jurisdiction in failing to hold a representation vote pursuant to old section 8(2) which, due to the transitional provision, had now become obligatory regardless of how the Board ultimately disposed of the section 11 application. Indeed, the employer argued that the Board may have been so obligated even under the old Act and before the passage of Bill 7. Unfortunately, this argument was never put to the Board so we are without the benefit of any explicit reasons on this point and the employer argues this is evidence that the Board never turned its mind to the requirements of section 8(2) of the old Act.

Secondly, the employer submitted that the Board's decision in applying section 11 was patently unreasonable because the unfair labour practices were so slight that the conclusion no other remedy was available is untenable.

Dealing with the second argument first, while the Board was not unanimous in its holding, there was ample evidence before the Board to find as the majority did. The issues raised by section 11 are at the heart of the Board's responsibilities and expertise. In light of the distinctive labour relations setting before it and having regard to the wording of the statute, it cannot be said the Board's decisions is patently unreasonable.

With respect to the argument that the Board was obligated to hold a vote under old subsection 8(2), at least in light of the mandatory vote requirements of the new Act, we do not agree. First, applying a "pragmatic and functional" test to determining whether subsection 8 in this respect is jurisdictional, we have come to the conclusion it is not. The relationship of old subsection 8 to new section 11 in the context of transitional section 3, insofar as deciding whether a vote must be immediately held before inquiring into section 11 allegations, falls well within the Board's expertise. This is the detail of labour board applications where policy, tactic and statutory interpretation intertwine. We think it highly unlikely that the Legislature intended to have this court second guessing whether a vote, which may never be relied upon, must be held before or after the Board completes its analysis of a section 11 application. Obviously, the Board did not hold such a vote and its decision in that respect cannot be said to be patently unreasonable. Old section 8 does not specify the timing of a representation vote and, at least in the context of a section 3 matter (i.e. one before October 4, 1995), section 11 does not direct otherwise. Indeed, subsection 11(1)(2) appears to explicitly contemplate certification without the holding of a representation vote. The applicant relies on the reference to "another representation vote" in section 11(1)(2), but this may be in response to the fact that new section 8(5) requires a speedy vote "unless the Board directs otherwise". Thus, a representation vote may well have been conducted had that section been applicable unless the Board decided to the contrary. Of course, new section 8 was not applicable and the former legislation did not demand speedy votes in every case or where membership evidence was between 40% and 55% but an unfair labour practice certificate was requested. Indeed, the Board's invariable practice under that law was to first inquire into unfair labour practice requests for certification before deciding whether a vote should be held. It seems unlikely that the Legislature was seeking to reverse this procedural practice particularly in the context of a matter subject to section 3. Also of relevance is section 11(5) which refers to the Board determining that a representation vote is to be taken. The Board is not to be faulted for failing to describe its thinking in detail particularly when this particular argument was not raised with it.

Even if the issue were a jurisdictional one, intervention would not be merited for these same reasons and as a matter of discretion, in light of the failure of the employer to raise this argument with the Board.

For all of these reasons, the application is dismissed. The applicant is directed to pay the trade union its costs fixed in the amount of \$3500.

**Matlow J. (Dissenting):** With the greatest of respect, I disagree with the disposition of the majority. I would allow the application, set aside the decision of the Board and remit the matter to the Board for reconsideration in accordance with these reasons.

In my view, the Board properly recognized the application of the transitional provisions of the New Act and invited the parties to make submissions as to the impact of the New Act on the procedure to be followed in dealing with the application before it.

The submissions made by the Employer adequately urged the Board to apply section 8 of the Old Act. The following excerpts were included in the Employer's written submission to the Board.



"In a proceeding relating to an application for certification, where the application for certification is made before October 4, 1995, the Board shall continue to apply sections 5, 8, 9, and 9.1 of the old Act..."

"With respect to membership in a trade union, section 8(2) provides that the Board shall (*italics copied*) direct a representation vote..."

I disagree with the conclusion of the majority that "Even if the issue were a jurisdictional one, intervention would not be merited for these same reasons and as a matter of discretion, **in light of the failure of the employer to raise this argument with the Board** (emphasis added)". The excerpts quoted above disclose that the Employer's submissions to the Board did squarely raise the jurisdictional issue in question. However, even if the Employer had not done so explicitly, I would still not exercise my discretion differently. The Employer was entitled to expect that the Board would know its own statutory jurisdiction even without the benefit of the Employer's submissions.

Section 8(2) of the Old Act reads as follows:

"8.(2) Representation vote. -- The Board **shall** (emphasis added) direct that a representation vote be taken if it is satisfied that at least 40 per cent and not more than 55 per cent of the employees in a bargaining unit are members of the trade union on the certification application date or have applied to become members on or before that date."

Despite having received the submissions regarding the application of the transitional provisions of the New Act, the Board failed to dispose of the issue and determine which old statutory provisions continued to apply and which did not. Rather, the Board sidestepped the issue and merely stated that:

"Having regard to our findings of fact and our interpretation of the relevant provisions of the new Act, we are prepared to accept, without deciding, that these applications are now subject to the provisions of the Labour Relations Act, 1995 (the "Act")."

The Board then went on to certify the Union without first directing a representation vote pursuant to section 11 of the New Act.

Section 11 of the New Act reads as follows:

"11.(1) Certification where Act contravened. -- Upon the application of a trade union, the Board may certify the trade union as the bargaining agent for the employees in a bargaining unit in the following circumstances:

1. An employer, employers' organization or person acting on behalf of an employer or employers' organization has contravened the Act.
2. The result of the contravention is that a representation vote **does not** (emphasis added) or **would not** (emphasis added) likely reflect the true wishes of the employees in the bargaining unit about being represented by the trade union.
3. No other remedy, including the taking of **another** (emphasis added) representation vote, is sufficient to counter the effects of the contravention.
4. The trade union has membership support adequate for the purposes of collective bargaining in a bargaining unit found by the Board to be appropriate for collective bargaining.

(2) No certification where Act contravened. -- Upon the application of an interested person, the Board may dismiss an application for certification of a trade union as the bargaining agent for the employees in a bargaining unit in the following circumstances:

1. A trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions has contravened the Act.
2. The result of the contravention is that a representation vote **does not or would not** (emphasis added) likely reflect the true wishes of the employees in the bargaining unit about being represented by the trade union.
3. No other remedy, including the taking of **another** (emphasis added) representation vote, is sufficient to counter the effects of the contravention.

(3) Use of representation vote. -- The Board **may consider the results of a representation vote** (emphasis added) when making a decision under this section.

(4) Effect of representation vote. -- Subsections 10(1) and (2) do not apply with respect to a representation vote taken in the circumstances described in this section."

It is my view that the plain meaning of these two section includes the following concepts:

- (1) a representation vote is mandatory when section 8(2) of the Old Act applies; and
- (2) the Board may consider the results of a representation vote when making a decision under section 11 of the New Act.

This interpretation is consistent with the expressed policy set out in the New Act to encourage reliance on the results of quickly held representation votes.

Because section 11 of the New Act is substantially different from its predecessor in the Old Act, old section 9.2, and makes repeated references to representation votes, the importance of having a representation vote in cases to which section 11 applies is much greater than in cases to which the old section 9.2 applied.

In the circumstances of this case, it is my view that the Board failed to:

- (1) determine its own statutory jurisdiction at all;
- (2) direct that a representation vote be taken as required by section 8(2).

Instead, it proceeded on an erroneous assumption regarding its own jurisdiction. As a result, the Board deprived itself of an opportunity to consider whether or not the results of a representation vote would be helpful in its decision-making process and it deprived the Employer of an opportunity to make submissions to the Board that the results of a representation vote would be helpful and ought to be considered by the Board in its consideration of the Union's section 11 application.

Although the Board deserves curial deference with respect to matters falling within its expertise, matters of statutory interpretation going to the very heart of the jurisdiction of the Board are not matters which should be viewed that way. Rather, they are matters about which this Court is duty bound to exercise its own independent judgment in carrying out its statutory supervisory function.

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**4643-94-R (Court File No. 645/96) Gourmet Baker Inc., Applicant v. The United Steelworkers of America and the Ontario Labour Relations Board, Respondents**

**Certification - Employee - Judicial Review - Board finding that thirteen lead hands employed at employer's production facility exercising managerial functions and not "employees"**

**for purposes of the Act - Certificate issuing - Application for judicial review dismissed by Divisional Court**

Board decision not reported.

Ontario Court (General Division), Divisional Court, McFarland, Taliano and McLeod JJ., April 8, 1997.

**MacFarland J. (endorsement):** As counsel for the applicant has conceded the standard of review in an application of this nature is patent unreasonableness and we are not persuaded that this decision of the Board was patently unreasonable. The application is dismissed. The respondent Board does not seek costs. Costs to the respondent union of this application and of the appearance before Saunders J. on November 19, 1996 fixed in the sum of \$5,000.00







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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING FEBRUARY 1997

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Under Sec. 11 of the Act

**0387-96-R:** United Steelworkers of America (Applicant) v. Wal-Mart Canada, Inc., (Respondents)

Unit: "all employees of Wal-Mart Canada Inc. at 1950 Lauzon Road, in the City of Windsor, save and except assistant managers, persons above the rank of assistant manager and the personnel manager and persons employed on a temporary basis for a fixed period of time" (1 employee in unit)

Number of names of persons on revised voters' list	209
Number of persons who cast ballots	205
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	203
Number of segregated ballots cast by persons whose names appear on voter's list	9
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	43
Number of ballots marked against applicant	151
Number of ballots segregated and not counted	9

### Bargaining Agents Certified Subsequent to Vote

**0101-96-R:** United Steelworkers of America (Applicant) v. The Association of Allied Health Professionals: Ontario (Respondent)

Unit: "all employees of The Association of Allied Health Professionals: Ontario in the Province of Ontario, save and except supervisor and persons above the rank of supervisor" (7 employees in unit)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	6
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

**0899-96-R:** International Association of Machinists and Aerospace Workers (Applicant) v. R-Theta Inc. (Respondent)

Unit: "all employees of R-Theta Inc. employed at 6620 Kestrel Road, in the City of Mississauga, save and except forepersons, persons above the rank of foreperson, office, clerical and technical employees and sales staff" (65 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	73
Number of persons who cast ballots	65
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	65
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of applicant	34
Number of ballots marked against applicant	31

**1637-96-R:** Cartage and Miscellaneous Employees' Union, Local 931 (Applicant) v. 9036-5636 Québec Inc. (Respondent)

Unit: "all employees of 9036-5636 Québec Inc. in the City of Ottawa, save and except supervisors and persons above the rank of supervisor" (7 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	3

**1719-96-R:** The International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Iori Plaster & Drywall Contractors Ltd. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Iori Plaster & Drywall Contractors Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all painters and painters' apprentices in the employ of Iori Plaster & Drywall Contractors Ltd. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (6 employees in unit) (Having regard to the agreement of the parties) (Clarity Note)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	10
Number of ballots marked in favour of applicant	4
Number of ballots segregated and not counted	6

**2125-96-R:** International Union of Operating Engineers Local 772 (Applicant) v. Chedoke-McMaster Hospitals (Respondent)

Unit: "all Tradesmen, Maintenance Men, Building Service Operators, Associated Craftsmen and their Helpers save and except Supervisors and persons above the rank of Supervisor" (38 employees in unit)

Number of names of persons on revised voters' list	38
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	34
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	9

**2505-96-R:** Teamsters Local Union No. 879 (Applicant) v. Hamilton Bio Conversion Inc. (Respondent)

Unit: "all employees of Hamilton Bio Conversion Inc. in the City of Hamilton, save and except Supervisors, persons above the rank of Supervisor, office and sales staff" (10 employees in unit) (Having regard to the agreement of the parties) (Clarity Note)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	17
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	5

**2568-96-R:** Teamsters Local Union No. 419 (Applicant) v. Brampton Bio Conversion Inc. (Respondent)

Unit: "all employees of Brampton Bio Conversion Inc. in the City of Hamilton, save and except Supervisors, persons above the rank of Supervisor, office and sales staff" (16 employees in unit) (Having regard to the agreement of the parties) (Clarity Note)



Number of names of persons on revised voters' list	23
Number of persons who cast ballots	21
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	6

**2960-96-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Northampton Inns (Whitby) Inc. c.o.b. as Comfort Hotel Downtown (Respondent)

Unit: "all employees of Northampton Inns (Whitby) Inc. c.o.b. as Comfort Hotel Downtown employed at 15 Charles Street East, Toronto, save and except supervisors, persons above the rank of supervisor, executive housekeeper, sales staff, accounting staff and students enrolled in a college hotel management course" (15 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	13
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	0

**3164-96-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Hald-Nor Community Credit Union Limited (Respondent)

Unit: "all employees of Hald-Nor Community Credit Union Ltd. in the Province of Ontario, save and except Branch Operations Managers and those above the rank of Branch Operations Manager, Branch Managers, Loans Managers, Head Office Manager, Controller and Mortgage Administration Manager" (27 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	24
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	0

**3268-96-R:** Bricklayers, Masons Independent Union of Canada Local 1 (Applicant) v. Great Gulf Homes Ltd. (Respondent)

Unit: "all construction labourers in the employ of Great Gulf Homes Ltd. in all sectors of the construction industry other than the industrial, commercial and institutional sector in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0

**3272-96-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Scan Electric Limited and Scan Electric (Metro) Limited (Respondents)

Unit: "all journeymen electricians and electricians' apprentices in the employ of Scan Electric Limited and Scan Electric (Metro) Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen electricians and electricians' apprentices in the employ of Scan Electric Limited and Scan Electric (Metro) Limited in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and

that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman” (21 employees in unit)

Number of names of persons on revised voters’ list	7
Number of persons who cast ballots	18
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	11

**3277-96-R:** Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. Tribute Homes (Respondent)

Unit: “all construction labourers in the employ of Tribute Homes in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, save and except non-working foremen and persons above the rank of non-working foreman” (3 employees in unit)

Number of names of persons on revised voters’ list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	7
Number of segregated ballots cast by persons whose names appear on voter’s list	0
Number of segregated ballots cast by persons whose names do not appear on voters’ list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	2

**3287-96-R:** United Steelworkers of America (Applicant) v. PS & T Canada Inc. (Respondent)

Unit: “all employees of PS & T Canada Inc., in the City of Mississauga, save and except forepersons, persons above the rank of foreperson, office, clerical and sales staff” (34 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters’ list	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	28
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	1

**3387-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Jackson Skate Co., a division of Tournament Sports (Respondent)

Unit: “all employees of Jackson Skate Co., a division of Tournament Sports in the City of Waterloo, save and except forepersons, persons above the rank of foreperson, office and clerical staff” (42 employees in unit) (Having regard to the agreement of the parties) (Clarity Note)

Number of names of persons on revised voters’ list	44
Number of persons who cast ballots	41
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	39
Number of segregated ballots cast by persons whose names appear on voter’s list	2
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	2

**3411-96-R:** Canadian Union of Public Employees (Applicant) v. Hamilton Health Sciences Corporation (Respondent)

Unit: "all employees of the Hamilton Health Sciences Corporation, regularly employed at its General and Henderson sites for less than 20 hours per week in the job classifications contained in the existing full time collective agreement between C.U.P.E. Local 794 and the Hamilton Health Sciences Corporation (formerly c.o.b. as the Hamilton Civic Hospitals)" (502 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	502
Number of persons who cast ballots	273
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	192
Number of segregated ballots cast by persons whose names do not appear on voters' list	81
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	144
Number of ballots marked against applicant	47
Number of ballots segregated and not counted	81

**3476-96-R:** United Steelworkers of America (Applicant) v. 984341 Ontario Limited (Respondent)

Unit: "all employees of 984341 Ontario Limited c.o.b. as T. & P. Shell in the City of Ottawa, save and except Managers and persons above the rank of Manager, Office and Clerical Staff" (22 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	20
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	19
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	1

**3511-96-R:** United Steelworkers of America (Applicant) v. Pacific Plating Limited (Respondent)

Unit: "all employees of Pacific Plating Limited in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff," (41 employees in unit) (Having regard to the agreement of the parties) (Clarity Note)

Number of names of persons on revised voters' list	48
Number of persons who cast ballots	47
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	41
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	29
Number of ballots marked against applicant	12
Number of ballots segregated and not counted	6

**3516-96-R:** Brewery, General and Professional Workers' Union (Applicant) v. Ontario Cancer Institute/Princess Margaret Hospital (Respondent) v. International Union, United Plant Guard Workers of America, Local 1962 (Intervener)

Unit: "all security guards employed by the Ontario Cancer Institute/Princess Margaret Hospital in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor and students employed during the school vacation period" (26 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	26
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7



Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	10
Number of ballots marked in favour of intervener	0

**3520-96-R:** Brewery, General and Professional Workers' Union (Applicant) v. St. Michael's Hospital (Respondent) v. United Plant Guard Workers of America (Intervener)

Unit: "all employees of St. Michael's Hospital employed as security guards, save and except supervisors, persons above the rank of supervisor, employees regularly employed for not more than 24 hours per week, employees employed during vacation periods, and part-time employees who are temporarily assigned to fill full-time positions which are vacant due to vacation, sick leave, leave of absence and any other authorized leave" (18 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	18
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of ballots marked in favour of applicant	17
Number of ballots marked in favour of intervener	0

**3521-96-R:** Brewery, General and Professional Workers' Union (Applicant) v. St. Michael's Hospital (Respondent) v. United Plant Guard Workers of America (Intervener)

Unit: "all employees of St. Michael's Hospital employed as security guards employed for 24 hours or less per week, save and except employees employed during vacation periods, supervisors above the rank of supervisor and employees regularly employed for more than 24 hours" (27 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of ballots marked in favour of applicant	7
Number of ballots marked in favour of intervener	0

**3523-96-R:** Brewery, General and Professional Workers' Union (Applicant) v. The Wellesley Central Hospital (Respondent) v. United Plant Guard Workers of America, (Intervener)

Unit: "all employees of The Wellesley Central Hospital employed as security officers in the Municipality of Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor" (37 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of ballots marked in favour of applicant	16

**3539-96-R:** Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. Concord Trimming Inc. (Respondent)

Unit: "all construction labourers and journeymen and apprentice carpenters in the employ of Concord Trimming Inc. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

Number of names of persons on revised voters' list	8
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Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	5

**3564-96-R:** The Association of Allied Health Professionals: Ontario (Applicant) v. Elgin Community Care Access Centre (Respondent) v. Ontario Nurses' Association (Intervener)

Unit: "all registered and graduate nurses employed by the Elgin Community Care Centre, in a nursing capacity, save and except the Supervisor of Nursing and persons above the rank of Supervisor of Nursing" (15 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	13
Number of ballots marked in favour of intervener	3
Number of ballots segregated and not counted	0

**3578-96-R:** Ontario Nurses' Association (Applicant) v. Ontario Cancer Treatment and Research Foundation London Regional Cancer Centre (Respondent)

Unit: "all clinical instructors who are certified radiation therapists working at the London School of Radiation Therapy in the position of Clinical Instructor employed by the Ontario Cancer Treatment and Research Foundation, London Regional Cancer Centre at its 790 Commissioners Road East location in the City of London, save and except supervisors and persons above the rank of supervisor and persons for whom any trade union held bargaining rights as of February 6, 1997 (the date of the application)" (2 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	3

**3603-96-R:** Canadian Union of Public Employees (Applicant) v. Niagara Ina Grafton Gage Home of the United Church (Respondent) v. Christian Labour Association of Canada (Intervener)

Unit: "all employees of Niagara Ina Grafton Gage Home of the United Church of Canada, in the Regional Municipality of Niagara, save and except Administrators, Office Staff, Activity Director, Supervisors, and persons above the rank of Supervisor" (53 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	59
Number of persons who cast ballots	44
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	44
Number of ballots marked in favour of applicant	30
Number of ballots marked in favour of intervener	14

### Applications for Certification Dismissed Without Vote

**0164-95-R:** The Power Workers' Union, CUPE Local 1000 ("PWU") (Applicant) v. Ontario Hydro (Respondent) v. International Brotherhood of Electrical Workers, Local 1788 ("IBEW 1788"), International Brotherhood of Electrical Workers, Local 1687 ("IBEW 1687"), The IBEW Construction Council of Ontario ("IBEW CCO"), The Electrical Contractors Association of Ontario ("ECAO"), The Electrical Power Systems Construction Association ("EPSCA") (Interveners)

Unit: “all journeymen linemen, foremen and sub-foremen and groundwork foremen employed by Ontario Hydro in OLRB Area #21 (that portion of the District of Algoma south of the 49th parallel of latitude) engaged in construction work not on Ontario Hydro property” (0 employees in unit)

**0186-95-R:** Power Workers’ Union, Canadian Union of Public Employees - C.L.C., Local 1000 (“PWU”) (Applicant) v. Ontario Hydro (Respondent) v. The IBEW Electrical Power Systems Construction Council of Ontario (“IBEW EPSCCO”), The Electrical Power Systems Construction Association (“EPSCA”), International Brotherhood of Electrical Workers, Local 1788 (“IBEW 1788”) (Interveners)

Unit: “all electrician journeymen including foremen and sub-foremen, electrician welders, electrician apprentices and communication electricians employed by Ontario Hydro and engaged in all construction industry work, as defined in the Generation Projects Collective Agreement including the letter of understanding, on Ontario Hydro Generating facilities” (0 employees in unit)

**0187-95-R:** Power Workers’ Union, Canadian Union of Public Employees - C.L.C., Local 1000 (“PWU 1000”) (Applicant) v. Ontario Hydro (Respondent) v. The IBEW Electrical Power Systems Construction Council of Ontario (“IBEW EPSCCO”), The Electrical Power Systems Construction Association (“EPSCA”), The International Brotherhood of Electrical Workers, Local 353 (“IBEW 353”), The International Brotherhood of Electrical Workers, Local 105 (“IBEW 105”), The International Brotherhood of Electrical Workers, Local 1687 (“IBEW 1687”), International Brotherhood of Electrical Workers, Local 1788 (“IBEW 1788”) (Interveners)

Unit: “all electrician journeymen including foremen and subforemen, electrician apprentices, linemen journeymen including foremen and subforemen, communications electricians, linemen apprentices/learners, electrical welders, ground work foremen and subforemen, groundmen, groundmen drivers, groundmen operators and utilitymen employed by Ontario Hydro and engaged in all construction work performed on transmission systems for Ontario Hydro under the Leigh’s Bay Transmission Line Construction Contract # CC-BEC950123 or on Ontario Hydro property in the Province of Ontario” (0 employees in unit)

**1152-96-R:** International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. Canadian Building Restoration Ltd. (Respondent) v. Operative Plasterers’ Cement Masons’ and Restoration Steeplejacks of the United States and Canada, Local 598 (Intervener)

Unit: “all journeymen and apprentices, bricklayers, stonemasons, plasterers and improvers in the employ of the Canadian Building Restoration Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentices, bricklayers, stonemasons, plasterers and improvers in the employ of Canadian Building Restoration Ltd. in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non- working foremen and persons above the rank of non-working foreman” (9 employees in unit)

### **Applications for Certification Dismissed Subsequent to Vote**

**2676-95-R:** The Ontario Pipe Trade Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 46 (Applicant) v. Commercial Mechanical Services Ltd. (Respondent)

Unit: “all plumbers and plumbers’ apprentices, steamfitters and steamfitters’ apprentices in the employ of Commercial Mechanical Services Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all plumbers and plumbers’ apprentices, steamfitters and steamfitters’ apprentices in the employ of Commercial Mechanical Services Ltd. in all other sectors in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman” (18 employees in unit)



Number of persons who cast ballots	15
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	0

**1800-96-R:** International Union of Operating Engineers, Local 793 (Applicant) v. Kenaidan Contracting Ltd. (Respondent)

Unit: "all employees of Kenaidan Contracting Ltd. and Jet Blast Hydro Demolition Canada Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all employees of Kenaidan Contracting Ltd. and Jet Blast Hydro Demolition Canada Inc. in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

Number of names of persons on revised voters' list	27
Number of persons who cast ballots	13
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	14

**2054-96-R:** Teamsters Local Union No. 879 (Applicant) v. Kitchener-Waterloo Record, a division of Southam Inc. (Respondent)

Unit: "all dependent contractors of The Record, division of Southam Inc. employed as drivers in and out of Kitchener engaged in the delivery of newspapers, save and except supervisors, persons above the rank of supervisor and persons for whom any trade union held bargaining rights as of October 15, 1996" (50 employees in unit)

**2277-96-R:** The United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Aries Contracting (Ottawa) Inc. (Respondent)

Unit: "all journeymen and apprentice carpenters in the employ of Aries Contracting (Ottawa) Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen and apprentice carpenters in the employ of Aries Contracting (Ottawa) Inc. in all other sectors of the construction industry in the Regional Municipality of Ottawa-Carleton, and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots marked against applicant	3

**3130-96-R:** Service Employees Union, Local 183 (Applicant) v. Aye Company Limited (Respondent)

Unit: "all taxi drivers of Aye Company Limited in the City of Belleville, save and except dispatchers and persons above the rank of dispatcher" (37 employees in unit)

Number of names of persons on revised voters' list	40
Number of persons who cast ballots	39
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	27
Number of ballots segregated and not counted	2
Number of names of persons on revised voters' list	40
Number of persons who cast ballots	33

Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	30
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	24
Number of ballots segregated and not counted	3

**3193-96-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Marmet Electrical Contracting Inc. (Respondent)

Unit: "all journeymen electricians and electricians' apprentices employed by Marmet Electrical Contracting Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all journeymen electricians and electricians' apprentices employed by Marmet Electrical Contracting Inc. in all other sectors of the construction industry in the Counties of Essex and Kent; the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township); the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	0

**3324-96-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. March Aluminum Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of March Aluminum Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of March Aluminum Ltd. in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (9 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	8

**3339-96-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Top Vinyl & Aluminum Contracting Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Top Vinyl & Aluminum Contracting Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of Top Vinyl & Aluminum Contracting Inc. in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non- working foremen and persons above the rank of non-working foreman" (7 employees in unit)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	11

Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	2

**3347-96-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Goreski Roofing and Lathing Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Goreski Roofing and Lathing Ltd. engaged in roofing construction in all sectors of the construction industry excluding the industrial, commercial and institutional sector, in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; and the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, save and except non-working forepersons and persons above the rank of non-working forepersons" (14 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	11

**3404-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Regional Die Casting Limited (Respondent)

Unit: "all employees of Regional Die Casting Limited in the City of Stoney Creek, Ontario, save and except supervisors, persons above the rank of supervisors, office, clerical, engineering, sales staff and students employed during the school vacation period" (158 employees in unit)

Number of names of persons on revised voters' list	183
Number of persons who cast ballots	181
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	167
Number of segregated ballots cast by persons whose names appear on voter's list	14
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	52
Number of ballots marked against applicant	113
Number of ballots segregated and not counted	14

**3467-96-R:** Masonry Council of Unions Toronto and Vicinity (Applicant) v. Heathwood Homes Limited (Respondent)

Unit: "all construction labourers, journeymen and apprentice bricklayers, journeymen and apprentice carpenters in the employ of Heron Homes in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	1



Number of ballots marked against applicant	1
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**3478-96-R:** Brewery, General and Professional Workers' Union (Applicant) v. Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Respondent)

Unit: "all office and clerical employees of the Respondent in the Municipality of Metropolitan Toronto save and except supervisors and persons above the rank of supervisors" (4 employees in unit)

Number of names of persons on revised voters' list	4
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	3

**3543-96-R:** The Canadian Union of Operating Engineers and General Workers (Applicant) v. Ault Foods Limited (Respondent) v. Milk and Bread Drivers, Dairy Employees, Caterers & Allied Employees, Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Intervener)

Unit: "all employees of the Toronto, Ontario District, at the Don Mills Branch Plant and Garage and any other operation within Metropolitan Toronto, save and except: A) plant protection employees, office staff, chief engineers, foremen, milk route foremen, those above the rank of foreman and milk route foreman, territory salesman, and persons covered by subsisting collective agreements; and B) persons engaged on a casual basis to replace regular employees who are off work due to sickness or accident provided such period is less than 24 hours per week." (176 employees in unit)

Number of names of persons on revised voters' list	177
Number of persons who cast ballots	148
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	145
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	37
Number of ballots marked in favour of intervener	108
Number of ballots segregated and not counted	2

**3550-96-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Chislett Asphalt & Roofing Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Chislett Asphalt & Roofing Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of Chislett Asphalt & Roofing Ltd. in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	0
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

### Applications for Certification Withdrawn

**3418-96-R:** Teamsters Local Union 91 (Applicant) v. Huneault Waste Management (Respondent)

**3493-96-R:** International Brotherhood of Painters and Allied Trades, Local Union 114 (Applicant) v. Jones Power Company Limited (Respondent)

**3753-96-R:** Labourers' International Union of North America, Local 506 (Applicant) v. Teskey Construction Co. Limited (Respondent)

## **FIRST AGREEMENT - DIRECTION**

**2057-96-FC:** Canadian Union of Public Employees (Applicant) v. Nelson House of Ottawa-Carleton Inc. (Respondent) (Terminated)

## **APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER**

**3347-95-R:** Labourers' International Union of North America, Local 506 (Applicant) v. Future Building Materials Ltd., Future Acoustic & Drywall Supply Ltd., R.M.I. Equipment Rentals Inc., 1146898 Ontario Inc. (Respondents) (Endorsed Settlement)

**0374-96-R; 1756-96-R:** London and District Service Workers Union, Local 220 (Applicant) v. AAS Telecommunications Services Ltd., Answer North America, Cross Connect Communications Services Limited, Active Answering Services, Norman Rhora (Respondents); Communications, Energy & Paperworkers Union of Canada (Applicant) v. AAS Telecommunications Services Limited, Cross Connect Communications and Services, Cross Connect Communications Service Limited, 1165455 Ontario Inc. c.o.b. as Active Answering Service, Answer North America, Norman Rhora (Respondents) (Dismissed)

**1161-96-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Calvano Lumber & Trim Co. Ltd., Summerlin Trim Carpentry Limited, D.V.N. Trimming & Supply Inc., Gaplin Lumber Ltd., Somerlyn Trim and Doors Inc., Cultural Woodtek Inc. and Wooden Trim Carpentry Ltd., Cerveira Trimming & Co. Ltd., Devon Builders Hardware Ltd., Euro Carpentry Limited (Respondents) (Withdrawn)

**1275-96-R:** Ontario Pipe Trades Council (Applicant) v. Woburn Mechanical Systems Limited, B. Jackson Plumbing Ltd., Bernard Jackson Holdings Limited, Gorbern Mechanical Contractors Limited, Gorbern Mechanical Contractors Limited c.o.b. as "The Plumbers", G B Collins Holdings Limited and Envirosafe Inc. (Respondents) (Granted)

**1322-96-R:** Sheet Metal Workers' International Association, Local 539 (Applicant) v. Morv Barclay c.o.b. G & M Plumbing & Heating Ltd., Barclay Contracting Services Limited (Respondents) (Endorsed Settlement)

**1354-96-R:** International Union of Operating Engineers, Local 793 (Applicant) v. A.C.Z. Contractors Limited o/a Nova Contracting (Thunder Bay) Limited (Respondents) (Granted)

**1585-96-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Ranac Forming Limited and CNI Forming Inc. (Respondents) (Granted)

**1892-96-R:** United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Cupido Construction (1989) Ltd. and C & M Construction (Kingston) Limited (Respondents) (Endorsed Settlement)

**1921-96-R:** United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Bassi Developments Corp., Bassi Construction & Masonry Ltd., and Bassi Construction Limited (Respondents) (Granted)

**2159-96-R:** International Union of Bricklayers & Allied Craftsmen, Local No. 6. (Windsor) (Applicant) v. Grande Masonry Cement Contractors Windsor Ltd., 1088027 Ontario Inc., Leo's Cement Contractors (Respondents) (Granted)

**2250-96-R:** Labourers' International Union of North America, Local 183 on its own behalf and on behalf of The Bricklayers Independent Union of Canada, Local 1, and The Masonry Council of Unions Toronto and Vicinity (Applicant) v. Tratnik Brothers Limited, Strict Construction Limited (Respondents) (Endorsed Settlement)

**2638-96-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Terrazzo, Mosaic & Tile Company Limited, Gasparini Investments Ltd., Contemporary Marble Design Inc., 779926 Ontario Limited (Respondents) (Endorsed Settlement)

**2909-96-R:** Kenaidan Contracting Ltd. and Jet Blast Hydro Demolition Canada Limited (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) (Dismissed)

## SALE OF A BUSINESS

**3347-95-R:** Labourers' International Union of North America, Local 506 (Applicant) v. Future Building Materials Ltd., Future Acoustic & Drywall Supply Ltd., R.M.I. Equipment Rentals Inc., 1146898 Ontario Inc. (Respondents) (Endorsed Settlement)

**0092-96-R; 0158-96-R:** London and District Service Workers Union, Local 220 (Applicant) v. Rogers Cantel Paging Inc. (Respondent); Communications, Energy & Paperworkers Union of Canada (Applicant) v. Rogers Cantel Paging Inc. and MacLean Hunter Communications Inc. and AAS Telecommunications Services Limited and Cross Connect Communications and Services (Respondents) (Dismissed)

**1161-96-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Calvano Lumber & Trim Co. Ltd., Summerlin Trim Carpentry Limited, D.V.N. Trimming & Supply Inc., Gaplin Lumber Ltd., Somerlyn Trim and Doors Inc., Cultural Woodtek Inc. and Wooden Trim Carpentry Ltd., Cerveira Trimming & Co. Ltd., Devon Builders Hardware Ltd., Euro Carpentry Limited (Respondents) (Withdrawn)

**1275-96-R:** Ontario Pipe Trades Council (Applicant) v. Woburn Mechanical Systems Limited, B. Jackson Plumbing Ltd., Bernard Jackson Holdings Limited, Gorbern Mechanical Contractors Limited, Gorbern Mechanical Contractors Limited c.o.b. as "The Plumbers", G B Collins Holdings Limited and Envirosafe Inc. (Respondents) (Granted)

**1322-96-R:** Sheet Metal Workers' International Association, Local 539 (Applicant) v. Morv Barclay c.o.b. G & M Plumbing & Heating Ltd., Barclay Contracting Services Limited (Respondents) (Endorsed Settlement)

**1354-96-R:** International Union of Operating Engineers, Local 793 (Applicant) v. A.C.Z. Contractors Limited o/a Nova Contracting (Thunder Bay) Limited (Respondents) (Granted)

**1585-96-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Ranac Forming Limited and CNI Forming Inc. (Respondents) (Granted)

**1892-96-R:** United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Cupido Construction (1989) Ltd. and C & M Construction (Kingston) Limited (Respondents) (Endorsed Settlement)

**1921-96-R:** United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Bassi Developments Corp., Bassi Construction & Masonry Ltd., and Bassi Construction Limited (Respondents) (Granted)

**2159-96-R:** International Union of Bricklayers & Allied Craftsmen, Local No. 6 (Windsor) (Applicant) v. Grande Masonry Cement Contractors Windsor Ltd., 1088027 Ontario Inc., Leo's Cement Contractors (Respondents) (Granted)

**2250-96-R:** Labourers' International Union of North America, Local 183 on its own behalf and on behalf of The Bricklayers Independent Union of Canada, Local 1, and The Masonry Council of Unions Toronto and Vicinity (Applicant) v. Tratnik Brothers Limited, Strict Construction Limited (Respondents) (Endorsed Settlement)



**2638-96-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Terrazzo, Mosaic & Tile Company Limited, Gasparini Investments Ltd., Contemporary Marble Design Inc., 779926 Ontario Limited (Respondents) (Endorsed Settlement)

## APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

**2005-96-R:** Dorothy Machum (Applicant) v. Local 579 of the Retail, Wholesale and Department Store Union District Council of the United Food and Commercial Workers International Union (Respondent) v. 795679 Ontario Limited c.o.b. as G.G.'s Foodmart (Intervener)

Unit: "all employees of the 795679 Ontario Limited c.o.b. as G.G.'s Foodmart in the District of Manitoulin save and except Store Manager and persons above the rank of Store Manager" (15 employees in unit) (Dismissed)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	14
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of respondent	7
Number of ballots marked against respondent	7
Number of ballots segregated and not counted	1

**2529-96-R:** Staff of John Knox Christian School of Brampton (Applicant) v. CLAC - Christian Labour Association of Canada (Respondent) v. John Knox Christian School Board of Directors (Intervener)

Unit: "all employees of the John Knox Christian School Society in the City of Brampton, save and except Principal, persons above the rank of Principal, bus drivers, office and clerical staff" (17 employees in unit) (Granted)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of spoiled ballots	2
Number of ballots marked in favour of respondent	7
Number of ballots marked against respondent	8

**2786-96-R:** Store 186 Zellers Inc. (Applicant) v. United Food & Commercial Workers International Union Local 175 (Respondent) v. Zellers Inc. (Intervener)

Unit: "all employees of Zellers Inc. employed at its store at 1571 Sandhurst Circle in the City of Scarborough, save and except Supervisors/Group Merchandisers, persons above the rank of Supervisor/Group Merchandiser, Loss Prevention Officers, Personnel Clerks and students employed in a co-operative work program" (97 employees in unit) (Dismissed)

Number of names of persons on revised voters' list	97
Number of persons who cast ballots	81
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	47
Number of ballots marked against respondent	32
Number of ballots segregated and not counted	1

**2805-96-R:** Store #238 Zellers Inc. (Applicant) v. United Food & Commercial Workers International Union, Local 175 (Respondent) v. Zellers Inc. (Intervener)

Unit: "all employees of Zellers Inc. employed at its store at 1880 Eglinton Avenue East in the Municipality of Metropolitan Toronto, save and except Supervisors/Group Merchandisers, persons above the rank of Supervisor/

Group Merchandiser, Loss Prevention Officers, Personnel clerks and student employed in a co-operative work program" (132 employees in unit) (Dismissed)

Number of names of persons on revised voters' list	129
Number of persons who cast ballots	113
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	82
Number of ballots marked against respondent	31
Number of ballots segregated and not counted	0

**3068-96-R:** Harry Boyd (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Mraz Investments, operating as Commercial Cleaning Service (Intervener)

Unit: "all employees of Mraz Investments Limited, o/a Commercial Cleaning Services, engaged in cleaning services at Niagara College of Applied Arts and Technology, Welland Campus, save and except supervisors, and persons above the rank of supervisor" (13 employees in unit) (Granted)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	13
Number of ballots marked in favour of respondent	5
Number of ballots marked against respondent	8

**3155-96-R:** Carol Kieffer on behalf of a Group of Employees (Applicant) v. Ontario Liquor Boards Employees' Union (Respondent) v. Fort Erie Duty Free Shoppe Inc. (Intervener)

Unit: "all employees of the Fort Erie Duty Free Shoppe Inc. in the Town of Fort Erie, save and except Supervisors, persons above the rank of Supervisors, secretary to the Store Manager, persons regularly employed for not more than 24 hours a week and students employed during the school vacation period." (16 employees in unit) (Granted)

Number of names of persons on revised voters' list	22
Number of persons listed as in dispute	22
Number of persons who cast ballots	22
Number of ballots marked in favour of respondent	7
Number of ballots marked against respondent	15

**3203-96-R:** Employees of Zellers Inc. Store 007 Belleville, Ontario (Applicant) v. United Food and Commercial Workers' Union Local 175 (Respondent) v. Zellers Inc. (Intervener)

Unit: "all employees of Zellers Inc., employed at its store located at 540 Dundas Street West, Sydney Township, Hastings County, save and except Supervisors/Group Merchandisers, persons above the rank of Supervisor/Group Merchandiser, Loss Prevention Officers, Personnel Clerks, Pharmacy Managers, graduate and undergraduate Pharmacists, including Pharmacy Interns and Apprentice Pharmacists, and students employed in a co-operative work program" (54 employees in unit) (Dismissed)

Number of names of persons on revised voters' list	89
Number of persons who cast ballots	79
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	56
Number of ballots marked against respondent	22

**3234-96-R:** Maria Rozon (Applicant) v. Hospitality, Commercial and Service Employees Union, Local 73 chartered by Hotel Employees Restaurant Employees International Union (Respondent) v. Saan Stores Ltd. (Intervener)

Unit: "all employees of Saan Stores Ltd. located at 640 River Street, in the City of Thunder Bay, Ontario, save and except store manager, assistant store manager, management trainees, persons above the rank of assistant store manager, office and clerical staff and students employed during the school vacation period" (12 employees in unit) (Granted)

Number of names of persons on revised voters' list
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Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	9

**3288-96-R:** Employees of Zellers Inc. Store #111 (Applicant) v. United Food and Commercial Workers International Union Local 175 (Respondent) v. Zellers Inc. (Intervener)

Unit: "all employees of Zellers Inc. in the Town of Midland, save and except Supervisors/Group Merchandisers, persons above the rank of Supervisor/Group Merchandiser, Loss Prevention Officers, Personnel Clerks and students employed in a co-operative work program" (110 employees in unit) (Dismissed)

Number of names of persons on revised voters' list	110
Number of persons who cast ballots	92
Number of ballots marked in favour of respondent	66
Number of ballots marked against respondent	26

**3403-96-R:** Vijay Bakshi (Applicant) v. Retail Wholesale Canada Canadian Service Sector, Division of the United Steelworkers of America, Local 448 (Respondent) v. Market Drive Donuts Ltd. c.o.b. as Tim Hortons Donuts (Intervener)

Unit: "all employees of Market Drive Donuts Ltd., c.o.b. as Tim Horton Donuts in the Town of Milton, save and except supervisors, persons above the rank of supervisor and office and clerical staff" (62 employees in unit) (Granted)

Number of names of persons on revised voters' list	62
Number of persons who cast ballots	54
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	54
Number of ballots marked in favour of respondent	4
Number of ballots marked against respondent	50

**3468-96-R:** Hully Gully: All employees in the Township of Westminster (Applicant) v. Retail, Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America, Local 414 (Respondent) v. Hully Gully (London) Ltd. (Intervener) (Granted)

**3471-96-R:** Stephane Regimbald, (on behalf of employees of Nordik Windows Inc.) (Applicant) v. Retail, Wholesale Canada (Div. of U.S.W.A.) Local 414 (Respondent) v. Nordik Windows Inc. (Intervener)

Unit: "all employees of Nordik Windows Inc. in the Village of Vars, in the Township of Russell, save and except foremen, persons above the rank of foremen, persons employed for not more than 24 hours per week, students employed during the school vacation period, office, clerical and sales staff" (20 employees in unit) (Granted)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	18
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	18
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	5
Number of ballots marked against respondent	13
Number of ballots segregated and not counted	0

**3512-96-R:** Jeff Jewett (Applicant) v. Teamsters Local Union 419 (Respondent) v. Burnham (Canada) Ltd. (Intervener)

Unit: "all employees of Burnham (Canada) Ltd. working at and from Mississauga, Ontario and Metropolitan Toronto, excluding mechanic, contract operators (drivers), office and sales staff, casual helpers, warehouse supervisor and those above" (2 employees in unit) (Granted)



Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked against respondent	2

**3526-96-R:** Mary Roberts and Lois Powers (Applicant) v. Ontario Public Service Employees Union and its Local 512 (Respondent) v. The John Howard Society of Metropolitan Toronto (Intervener)

Unit: "all employees of the John Howard Society of Metropolitan Toronto, save and except supervisors and those above the rank of supervisor, secretary to executive director, accountant, students employed during school vacation period and persons regularly employed for not more than 24 hours per week" (6 employees in unit) (Granted)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	4

**3754-96-R:** Derrick J. Pherrill (Applicant) v. Communications, Energy & Paperworkers Union, Local 599 (Respondent) (Granted)

## REFERRAL FROM MINISTER (SECTION 109)

**2236-96-M:** Amalgamated Transit Union, Local 1587 (Applicant) v. Toronto Area Transit Operating Authority, c.o.b. as GO Transit (Respondent) (Withdrawn)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

**3562-96-U:** S.W.O. Distribution Centres Ltd. trading as Surelink (Applicant) v. Teamsters Local Union No. 419, Tom Fraser, Bill Accete, Domenic Guiste, Benito Abilleira, Peter Valilia, Jeff Marshall, Domenic Giorgio and Jack Ricchio (Respondents) (Granted)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE (CONSTRUCTION INDUSTRY)

**3500-96-U:** O.J. Pipelines Corp. (Applicant) v. Robert Ham, Robert Lammi, Juri Mertson, and Dave Andrusyk (Respondents) (Endorsed Settlement)

**3584-96-U:** O.J. Pipelines Corp. (Applicant) v. Robert Ham, Robert Lammi, Juri Mertson, Dave Andrusyk, Ray Buhr, Larry Leganchuk, Jim Bilstead (Respondents) (Granted)

**3618-96-U:** Banister Majestic Inc. (Applicant) v. Gary Oliver and Jack McMillan (Respondents) (Withdrawn)

## APPLICATIONS FOR DECLARATION OF UNLAWFUL LOCKOUT

**3154-96-U:** International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada, Local 173 (Applicant) v. Cineplex Odeon Corporation (Respondent) (Withdrawn)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**1455-94-U; 1637-94-U:** Samir Melhem, Mike Huzera, Dusan Egl, Ram Seenanan, Robb Herman, Behnam Ashrafhosseine, and Ali Jomma (Applicants) v. Retail Wholesale Canada Canadian Service Sector Division of the

United Steelworkers of America, Local 1688 (Ontario Taxi Union), Blue Line Taxi Co. Limited (Respondents); Blue Line Taxi Co. Limited (Applicant) v. Retail Wholesale Canada Canadian Service Sector Division of the United Steelworkers of America, Local 1688 (Ontario Taxi Union) (Respondent) (Dismissed)

**3530-94-U:** Jeff Fortais, Aj Kang, Herbert Frank, Pitor Martynek, Timal Outer, Ralph Defilippis, Syed Rizvie, Hassan Shafiee, Hossien Khakpoor, Christopher Mylan, Marcelo Paulino Jr. (Applicant) v. Canadian Security Union (Respondent) v. Barnes Security Services Ltd. c.o.b. as Metropol Security, United Steelworkers of America (Interveners) (Withdrawn)

**2992-95-U:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 46 (Applicant) v. Commercial Mechanical Services Ltd. (Respondent) (Dismissed)

**3598-95-U:** United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Trojan Forming Corporation, Trojan Forming Co., The Maplecrete Group Corporation, Trojan Forming Company Limited, Trojan Forming Company (1991) Limited/Maplecrete Construction Company Ltd., Trojan Forming (1991) Limited Mantex Management Group Incorporated, 746396 Ontario Limited and Robpetmar Ltd. (Respondents) (Endorsed Settlement)

**0203-96-U:** Canadian Union of Public Employees, Local 942 (Applicant) v. Royal Ottawa Health Care Group (Respondent) (Withdrawn)

**0375-96-U:** London and District Service Workers Union, Local 220 (Applicant) v. Rogers Cantel and AAS Telecommunications Services Ltd., Answer North America, Cross Connect Communications Services Limited, Active Answering Services, Norman Rhora (Respondents) (Dismissed)

**0431-96-U:** Alain St-Pierre (Applicant) v. Association des employés d'Ottawa-Carleton (Respondent) (Terminated)

**0439-96-U:** Victor Boivin (Applicant) v. C.U.P.E. Local 6, The City of Sudbury and Marcel Castonguay (Respondents) (Withdrawn)

**0453-96-U:** United Steelworkers of America (Applicant) v. Wal-Mart Canada Inc. (Respondent) (Granted)

**0528-96-U:** Mark Morell (Applicant) v. United Food and Commercial Workers Union, Local 333 (Canadian Securities Union) (Respondent) v. Group 4 C.P.S. Limited (Intervener) (Dismissed)

**0774-96-U; 0775-96-U; 0776-96-U; 0777-96-U; 0778-96-U; 0779-96-U; 0780-96-U:** Soft Drink Workers Joint Local Executive Council (Applicant) v. Coca-Cola Bottling Ltd. (Respondent); United Food & Commercial Workers International Union, Soft Drink Workers Joint Executive Council (Applicant) v. Coca-Cola Bottling Ltd. (Peterborough) (Respondent) (Granted)

**1226-96-U:** United Steelworkers of America (Applicant) v. Kaufman Footwear Inc., A Division of William H. Kaufman Inc. (Respondent) (Withdrawn)

**1589-96-U:** Service Employees International Union, Local 204 (Applicant) v. 20 Vic Management Inc., Yorkdale Shopping Centre Ltd., Yorkdale Shopping Centre Holdings Inc. (Respondents) (Withdrawn)

**1609-96-U:** Pegasus Plastics Inc. (Applicant) v. CAW, Local 195 (Respondent) (Withdrawn)

**1791-96-U:** Janel T. Perron (Applicant) v. Ontario Public Service Employees Union (Respondent) (Withdrawn)

**1878-96-U:** The Canadian Union of Public Employees and its Local 3851 (Applicant) v. Nelson House of Ottawa-Carleton Inc. (Respondent) (Terminated)

**2237-96-U:** Ethiraju Ramachandar (Applicant) v. Office and Professional Employees International Union Local 343 (Respondent) (Withdrawn)

**2369-96-U:** London & District Service Workers' Union, Local 220 SEIU, AFL, CIO, CLC. (Applicant) v. Meadowcroft Holdings Inc. (Carrying on business as Execu-Care Nursing Services Kitchener Meadowcroft Limited Partnership/5M Management Services Limited) (Respondent) (Withdrawn)

**2507-96-U:** Mordechai (Mike) Akerman (Applicant) v. Metropolitan Toronto Civic Employees' Union, CUPE Local 43 and The Municipality of Metropolitan Toronto (Respondents) (Dismissed)

**2522-96-U:** Robert Elliott President Local 1795 Robert Walpole Vice President Local 1795 (Applicant) v. John Henley Business Manager Local 1795 International Brotherhood of Painters and Allied Trades (Respondent) (Withdrawn)

**2526-96-U:** Todd Flint (Applicant) v. Lear Seating Whitby and Lear Seating Union Committee (Respondents) (Withdrawn)

**2592-96-U; 3368-96-U:** United Steelworkers of America (Applicant) v. Windsor AirLine Limousine Services Limited a/o Veteran Cab Company and Capital Cab Company, Henry Lesperance, Donald Harris Jr., Garry Dugal, Tim Curry, Al Droz, Chuck Haddad (Respondents); United Steelworkers of America (Applicant) v. Windsor Airline Limousine Services Limited a/o Veteran Cab Company and Capital Cab Company, Rajaei Quaqish and Kamel Sahom (Respondents) (Withdrawn)

**2683-96-U:** Karen M. Conroy (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) v. Loblaw's Supermarkets Limited (Intervener) (Dismissed)

**2733-96-U:** Robert Earle (Applicant) v. Cupe #68 (Respondent) v. City of Kitchener (Intervener) (Withdrawn)

**2764-96-U:** Frank Lasruk and attached list (Applicant) v. Greg Greco President of the Canadian Union of Brewery and General Workers Component 325 of N.U.P.G.E. (Respondent) (Withdrawn)

**2765-96-U:** Dean Tessier (Applicant) v. Bill Overy President of International Brotherhood of Teamsters Local 647 (Respondent) (Withdrawn)

**2778-96-U:** United Steelworkers of America (Applicant) v. Greenberg Stores Limited (Respondent) (Dismissed)

**2811-96-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Zellers Inc. (Respondent) (Withdrawn)

**2892-96-U:** The Association of Allied Health Professionals: Ontario (Applicant) v. Ottawa Civic Hospital (Respondent) (Withdrawn)

**2964-96-U:** Michael R. Howell and David Miller (Applicant) v. Royal Victoria Hospital of Barrie (Respondent) (Terminated)

**3015-96-U:** Joycelyn Rampersad (Applicant) v. Bakery, Confectionery & Tobacco Workers' International Union, Local 426 (Respondent) (Withdrawn)

**3075-96-U:** Employees Association, Computing Devices Canada (Applicant) v. Spero Manufacturing Inc. (Respondent) (Withdrawn)

**3096-96-U:** Association of Allied Health Professionals: Ontario (Applicant) v. Baycrest Centre for Geriatric Care (Respondent) (Withdrawn)

**3098-96-U:** Jeffrey M. Wilson (Applicant) v. Metropolitan Toronto Civic Employees' Union C.U.P.E. Local 43 (Respondent) (Withdrawn)



**3158-96-U:** Ontario Liquor Board Employees' Union (Applicant) v. Ambassador Duty Free Management Services Ltd. c.o.b. as The Ambassador Duty Free Store (Respondent) (Withdrawn)

**3229-96-U:** Mahabub Hossain (Applicant) v. United Steelworkers of America Local 9304, The Sutton Place Hotel (Respondents) (Withdrawn)

**3266-96-U:** Elitrex Plumbing Ltd. (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Respondent) (Withdrawn)

**3290-96-U:** Luciano Oresti (Applicant) v. CAW Local 1256 and Westroc Industries Ltd. (Respondents) (Withdrawn)

**3304-96-U:** Lorraine Marie Genereux (Applicant) v. Bombardier Inc. and C.A.W. Local 1075 (Respondents) (Withdrawn)

**3338-96-U:** IWA-Canada, Local 1000 (Applicant) v. Kent Trusses Limited (Respondent) (Withdrawn)

**3381-96-U:** Brian Aguiar (Applicant) v. Metropolitan Toronto Police Association (Respondent) (Dismissed)

**3386-96-U:** Johanne Montpetit (Applicant) v. Bakery, Confectionery and Tobacco Workers International Union, Local 181 (Respondent) (Dismissed)

**3399-96-U:** John A. Keane (Applicant) v. Regional Municipality of Ottawa Carleton (Respondent) (Dismissed)

**3406-96-U:** Bakery, Confectionery and Tobacco Workers International Union (Applicant) v. Dwyer Foods (Respondent) (Dismissed)

**3443-96-U:** Jaysukl Mistry (Applicant) v. Woodlands Store Fixtures Inc. Pancore (Respondent) (Dismissed)

**3475-96-U:** OPSEU (Robertson, Andrew) (Applicant) v. The Crown in Right of the Government of Ontario (Ministry of Community and Social Services), The Crown in Right of the Government of Ontario (Ministry of Transportation) (Respondents) (Withdrawn)

**3479-96-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Regional Die Casting Limited (Respondent) (Withdrawn)

**3490-96-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Caledon Tubing, a Division of REA Tool & Die Ltd. (Respondent) (Withdrawn)

**3496-96-U:** Surinder Kaur Thind (Applicant) v. Communications Energy & Paper Workers Local ST3 (Respondent) (Withdrawn)

**3505-96-U:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Scan Electric Limited and Scan Electric (Metro) Limited (Respondents) (Withdrawn)

**3566-96-U:** Gail Lam (Applicant) v. Custom Trim Ltd. (Respondent) (Dismissed)

**3569-96-U:** Jorge Guarda (Applicant) v. United Food and Commercial Workers International Union Local P-529A (Respondent) v. Cadbury Chocolate Canada Inc. (Intervener) (Withdrawn)

**3574-96-U:** Service Employees' Union, Local 210 (Applicant) v. Windsor Regional Cancer Centre (Respondent) (Withdrawn)

**3756-96-U:** Wayne Royle (Applicant) v. C.A.W. Canada Local 222 (Respondent) (Dismissed)

**3758-96-U:** Wayne Royle (Applicant) v. General Motors of Canada Ltd. (Respondent) (Dismissed)

## APPLICATION FOR INTERIM ORDER

**2230-96-M:** Canadian Union of Public Employees and its Local 3851 (Applicant) v. Nelson House of Ottawa-Carleton Inc. (Respondent) (Terminated)

## JURISDICTIONAL DISPUTES

**3084-95-JD:** Labourers' International Union of North America, Local 247 (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 249 and T. A. Andre & Sons (Ontario) Ltd. (Respondents) (Granted)

**0278-96-JD:** Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen, and International Union of Bricklayers and Allied Craftsmen, Local 7 (Applicant) v. The McBride Group Inc., Operative Plasterers and Cement Masons International Association of the U.S.A. and Canada, Local 598 and Labourers' International Union of North America, Local 527 (Respondents) v. United Brotherhood of Carpenters and Joiners of America, Local 93 (Intervener) (Granted)

**0304-96-JD; 1402-96-JD:** Ironworkers District Council of Ontario and International Association of Bridge, Structural and Ornamental Iron Workers, Local 759 (Applicant) v. Vicker Group, Millwright District Council of Ontario on its own behalf and on behalf of its Local 1151 (Respondents); Millwright District Council of Ontario on its own behalf and on behalf of its Local 1151 (Applicant) v. EKT 90 Inc., Iron Workers District Council of Ontario, International Association of Bridge, Structural and Ornamental Iron Workers, Local 759 (Respondents) (Endorsed Settlement)

## APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

**0732-93-M:** Southern Ontario Newspaper Guild Local 87, The Newspaper Guild (CLC, AFL-CIO) v. London Free Press Printing Company Limited (Respondent) (Granted)

**4139-95-M:** Halton RCSSB (Applicant) v. Canadian Union of Public Employees, Local 3166 (Respondent) (Dismissed)

**0511-96-M:** U.S.G.E. (Applicant) v. Alliance Employees' Union (A.E.U.) (Respondent) (Dismissed)

## COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

**2549-96-OH:** Mr. David Robinson (Applicant) v. Stelco, Hilton Works (Respondent) (Withdrawn)

**3002-96-OH:** Angelo Labruzzo (Applicant) v. Kirkwood and Murphy Limited (Respondent) (Withdrawn)

**3014-96-OH:** Andrew B. Georgeson (Applicant) v. Durable Release Coaters (Respondent) (Withdrawn)

**3236-96-OH:** Ralph Mestwarp (Applicant) v. Van-Rob Stampings Inc. (Respondent) (Withdrawn)

**3273-96-OH:** George Edward Lakatos (employee at Sunamco Ltd.) (Applicant) v. Jim Chownyk, President/General manager of Sunamco Ltd. (Respondent) (Withdrawn)

**3316-96-OH:** Patricia A. White (Applicant) v. P.O. Montgomery, Ent. and Ed Medeiros, General Manager, Canadian Tire Store #10 (Respondent) (Withdrawn)

**3525-96-OH:** Michelle Valentina Bobb (Applicant) v. Rogers Cantel Inc. (Respondent) (Dismissed)

## CECBA - CONTRAVENTION OF THE ACT

**0411-94-U:** The Ontario Public Service Employees Union (Applicant) v. The Crown in right of Ontario as represented by Ministry of Solicitor General and Correctional Services (Respondent) (Withdrawn)

## CONSTRUCTION INDUSTRY GRIEVANCES

**3352-94-G:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. J.B. Mechanical, Jack Bird Plumbing & Heating Ltd., Jack Bird Plumbing & Heating Ltd. c.o.b. as J.B. Mechanical, and 1009789 Ontario Inc. c.o.b. as J.B. Mechanical (Respondents) (Withdrawn)

**4005-95-G:** International Union of Bricklayers & Allied Craftsmen, Local 12 (Applicant) v. Eddie A. Beland c.o.b. as E. Beland Masonry and/or E. Beland Masonry Limited and/or, 959640 Ontario Inc. c.o.b. as Beland Masonry and/or 1114136 Ontario Inc. c.o.b. as Core Tec. Contracting (Respondents) (Granted)

**4006-95-G:** Labourers' International Union of North America, Local 1081 (Applicant) v. Eddie A. Beland c.o.b. as E. Beland Masonry and/or E. Beland Masonry Limited and/or 959640 Ontario Inc., c.o.b. as Beland Masonry and/or 1114136 Ontario Inc. c.o.b. as Core Tec. Contracting (Respondents) (Granted)

**0067-96-G; 0068-96-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 938806 Ontario Inc. c.o.b. as Leduc Electric (Respondent); International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Duraline Power Systems Ltd. (Respondent) (Granted)

**0074-96-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Am-Tech Electrical Services Ltd. (Respondent) (Withdrawn)

**0933-96-G:** Labourers' International Union of North America, Local 506 (Applicant) v. Future Building Materials Ltd., Future Acoustics & Drywall Supply Ltd., RMI Equipment Rentals Inc. and 1146898 Ontario Inc. (Respondents) (Endorsed Settlement)

**1274-96-G:** Ontario Pipe Trades Council (Applicant) v. Woburn Mechanical Systems Limited, B. Jackson Plumbing Ltd., Bernard Jackson Holdings Limited, Gorbern Mechanical Contractors Limited, Gorbern Mechanical Contractors Limited c.o.b. as "The Plumbers", G B Collins Holdings Limited and EnviroSAFE Inc. (Respondents) (Withdrawn)

**1319-96-G:** Sheet Metal Workers' International Association, Local 539 (Applicant) v. Morv Barclay c.o.b. G & M Plumbing & Heating Ltd., Barclay Contracting Services Limited (Respondents) (Endorsed Settlement)

**1351-96-G:** International Union Of Operating Engineers, Local 793 (Applicant) v. Don Severin Construction Ltd. (Respondent) (Endorsed Settlement)

**1586-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Ranac Forming Limited and CNI Forming Inc. (Respondents) (Granted)

**1626-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Torbridge Construction Ltd. (Respondent) (Dismissed)

**1670-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Mount Albert Masonry Ltd. (Respondent) (Granted)

**1872-96-G:** Bricklayers, Masons Independent Union of Canada Local 1 Labourers' International Union of North America Local 183 Masonry Council of Union Toronto and Vicinity (Applicant) v. Tratnik Brothers Limited (Respondent) (Endorsed Settlement)

**1891-96-G:** United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Cupido Construction (1989) Ltd. and C & M Construction (Kingston) Limited (Respondents) (Endorsed Settlement)

**1920-96-G:** United Brotherhood of Carpenters and Joiners of America, Local 2041 (Applicant) v. Bassi Developments Corp. (Respondent) (Granted)



**1922-96-G:** International Brotherhood of Painters and Allied Trades, Local Union 1819 (Applicant) v. Lessard Beaucage Lemieux Inc. (Respondent) (Withdrawn)

**2079-96-G:** United Brotherhood of Carpenters and Joiners of America, Lake Ontario District Council (Applicant) v. Lariano Acoustics (Respondent) (Granted)

**2158-96-G:** International Union of Bricklayers and Allied Craftsmen Local No. 6 (Windsor) (Applicant) v. Grande Masonry Cement Contractors Windsor Ltd., 1088027 Ontario Inc., Leo's Cement Contractors (Respondents) (Granted)

**2192-96-G:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Empire Lathing and Insulating Company Limited, Empire Drywall Inc., Old Mark Construction Ltd. (Respondents) (Withdrawn)

**2271-96-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Aquicon Construction Co. Ltd. (Respondent) (Granted)

**2285-96-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Nicholls-Radtke & Associates Limited (Respondent) (Withdrawn)

**2606-96-G:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Terrazzo, Mosaic & Tile Company Limited, Gasparini Investments Ltd., Contemporary Marble Design Inc. and 779926 Ontario Limited. (Respondents) (Endorsed Settlement)

**2679-96-G; 2700-96-G; 3303-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of The United States and Canada, Local Union 67 (Applicant) v. Calorific Construction Ltd. (Respondent) (Endorsed Settlement)

**2718-96-G:** International Union of Bricklayers and Allied Craftworkers, Local #2, Ontario (Applicant) v. Rockmount Construction & Masonry (860407 Ontario Limited) (Respondent) (Granted)

**2910-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Network Mechanical Inc. (Respondent) (Withdrawn)

**3004-96-G:** Ontario Council of the International Brotherhood of Painters and Allied Trades, Local 1904 (Applicant) v. Inter-Provincial Painting (Respondent) (Endorsed Settlement)

**3031-96-G:** International Brotherhood of Painters and Allied Trades, Local Union 1819 (Applicant) v. Industrial Glass & Aluminum (Respondent) (Endorsed Settlement)

**3104-96-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Today Tile & Carpet Ltd. (Respondent) (Granted)

**3126-96-G:** Drywall Acoustic Lathing and Insulation, Local 675 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rose Interiors Limited (Respondent) (Granted)

**3159-96-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Traugott Construction (Kitchener) Limited (Respondent) (Granted)

**3198-96-G:** Labourers' International Union of North America, Local 597 (Applicant) v. Delgant Construction Ltd. (Respondent) (Withdrawn)

**3202-96-G; 3413-96-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. H.L.O. Iron and Manufacturing Co. Ltd. (Respondent) (Endorsed Settlement)

**3246-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Calorific Construction Limited (Respondent) (Endorsed Settlement)

**3289-96-G:** United Brotherhood of Carpenters and Joiners of America Local 2486 (Applicant) v. Formcrete Contracting Ltd. (Respondent) (Endorsed Settlement)

**3298-96-G:** International Union of Bricklayers and Allied Craftworkers, Local #2, Ontario (Applicant) v. Florano Construction Limited (Respondent) (Granted)

**3306-96-G:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. J.B. Mechanical and Jack Bird Plumbing & Heating Ltd., Jack Bird Plumbing & Heating Ltd. c.o.b. as J.B. Mechanical and 1009789 Ontario Inc. c.o.b. as J.B. Mechanical (Respondents) (Withdrawn)

**3330-96-G:** International Union of Operating Engineers, Local 793 (Applicant) v. All Canada Crane Rental Corp. (Respondent) (Withdrawn)

**3361-96-G:** United Brotherhood of Carpenters and Joiners of America, Local 1946 (Applicant) v. Traugott Construction (Kitchener) Ltd. (Respondent) (Withdrawn)

**3367-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Black & McDonald Limited (Respondent) (Terminated)

**3378-96-G:** United Brotherhood of Carpenters and Joiners of America, Local 1256 (Applicant) v. Doug Chalmers Construction Ltd. (Respondent) (Withdrawn)

**3409-96-G:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Q-Tech Limited 663925 Ontario Inc. (Respondent) (Granted)

**3426-96-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. John W. Baldwin Electric Company Limited (Respondent) (Withdrawn)

**3428-96-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Centennial Electric Limited (Respondent) (Withdrawn)

**3429-96-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. D.J. Charlton Powerline Construction Ltd. (Respondent) (Withdrawn)

**3431-96-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Don Valley Electric (919937 Ontario Limited) (Respondent) (Withdrawn)

**3432-96-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Vantage Electric Services Inc. (Respondent) (Withdrawn)

**3442-96-G:** International Union of Elevator Constructors, Local 50 (Applicant) v. Northern Elevator Service Ltd. (Respondent) (Granted)

**3469-96-G:** Labourers' International Union of North America, Local 837 (Applicant) v. Ninco Construction Ltd. (Respondent) (Withdrawn)

**3486-96-G:** The United Brotherhood of Carpenters and Joiners of America, Local 249 (Applicant) v. Mor-Bren Construction Inc. (Respondent) (Granted)

**3498-96-G:** Sheet Metal Workers' International Association, Local 30 (Applicant) v. E.E.S. Systems Ltd. (Respondent) (Withdrawn)

**3538-96-G:** International Association of Bridge, Structural, and Ornamental and Reinforcing Iron Workers, Local 700 (Applicant) v. Ross Contractors and Engineers (Respondent) (Withdrawn)

**3542-96-G:** Sheet Metal Workers' International Association, Local 47 (Applicant) v. Skarlan Waterproofing Inc. (Respondent) (Withdrawn)

**3546-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Major Air Systems Ltd. (Respondent) (Withdrawn)

**3558-96-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Spider Installations Limited (Respondent) (Withdrawn)

**3560-96-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Sutherland - Schultz (Respondent) (Withdrawn)

**3581-96-G:** International Union of Elevator Constructors, Local 50 (Applicant) v. Otis Canada Inc. (Respondent) (Withdrawn)

**3582-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Trafalgar Mechanical Inc. (Respondent) (Withdrawn)

**3605-96-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Robert M. Campbell c.o.b. as Wescam Contracting (Respondent) (Endorsed Settlement)

**3625-96-G:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Scotco Insulation Services Inc. (Respondent) (Withdrawn)

**3664-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Cobra Drain & Development Corporation (Respondent) (Granted)

**3665-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Mariofino Contracting Inc. (Respondent) (Granted)

**3673-96-G:** International Union of Operating Engineers, Local 793 (Applicant) v. West Front Construction Ltd. (Respondent) (Granted)

**3676-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Choiceland Contracting Ltd. (Respondent) (Granted)

**3696-96-G:** International Brotherhood of Electrical Workers, Local 586 (Applicant) v. 1075777 Ontario Inc. c.o.b. as Lorne's Electric (Respondent) (Endorsed Settlement)

**3752-96-G:** Sheet Metal Workers' International Association, Local 30 (Applicant) v. Earls court Metal Industries Ltd. (Respondent) (Withdrawn)

**3869-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. 3709064 Ontario Limited c.o.b. as RAM AIRE (Respondent) (Granted)

## APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

**2565-94-U:** Glenn Hedrich (Applicant) v. The Regional Municipality of Waterloo (Respondent) (Denied)

**0372-95-G; 3295-95-G:** Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Torino Drywall Company Ltd. (Respondent); Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Torino Drywall Co. Ltd. (Respondent) (Dismissed)



**2602-95-U:** Robert Joffrey Savage (Applicant) v. London and District Service Workers' Union, Local 220, University Hospital (Respondents) (Dismissed)

**1358-96-R:** Norm Draker (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) v. Westcliffe Home Hardware (Intervener) (Denied)

**2083-96-U:** Rodrigo Vergara (Applicant) v. CAW-Canada, Local 385 (Respondent) (Denied)

**2507-96-U:** Mordechai (Mike) Akerman (Applicant) v. Metropolitan Toronto Civic Employees' Union, CUPE Local 43 and The Municipality of Metropolitan Toronto (Respondents) v. The Municipality of Metropolitan Toronto (Intervener) (Denied)

**3069-96-R:** Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Cumberland (Respondent) (Dismissed)



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# APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING MARCH 1997

## APPLICATIONS FOR CERTIFICATION

### Bargaining Agents Certified Without Vote

**2914-94-R:** Millwright District Council of Ontario United Brotherhood of Carpenters and Joiners of America on its own behalf and on behalf of Local 1425 (Applicant) v. Gorf Contracting Ltd. (Respondent)

Unit #1: "all millwrights and millwright apprentices in the employ of Gorf Contracting Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all millwrights and millwright apprentices in the employ of Gorf Contracting Ltd. in all sectors of the construction industry within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (14 employees in unit)

**0779-95-R:** Bakery, Confectionery & Tobacco Worker's International Union, Local 264 (Applicant) v. Restauraonics Services Ltd. (Respondent)

Unit: "all employees employed by Restauraonics Services Ltd. at Siemens Electric Limited at 1020 Adelaide Street South in the City of London, save and except Manager and persons above the rank of Manager" (11 employees in unit)

### Bargaining Agents Certified Subsequent to Vote

**2861-96-R:** International Union of Bricklayers and Allied Craftsmen, Local 2 (Applicant) v. Sebastian Spadafora, carrying on business as Fora Construction (Respondent)

Unit: "all journeymen and apprentice bricklayers, stonemasons and plasterers and improves in the employ of Sebastian Spadafora, carrying on business as Fora Construction in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen and apprentice bricklayers, stonemasons and plasterers and improvers in the employ of Sebastian Spadafora, carrying on business as Fora Construction in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	1

**2928-96-R:** International Union of Operating Engineers Local 772 (Applicant) v. Republic Environmental Systems (Fort Erie) Ltd. (Respondent)

Unit: "all employees of Republic Environmental Systems (Fort Erie) Ltd. located at 1731 Pettit Road, Fort Erie, Ontario, save and except office staff, production supervisor and persons above the rank of production supervisor" (10 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9

Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

**3337-96-R:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Speed Electric Limited (Respondent)

Unit: "all journeymen electricians and electricians' apprentices in the employ of Speed Electric Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all journeymen electricians and electricians' apprentices in the employ of Speed Electric Limited in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, and in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (10 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	7
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	5

**3388-96-R:** United Food and Commercial Workers International Union Local 175 (Applicant) v. Russo Foods 90 Limited (Respondent)

Unit: "all employees of Russo Foods 90 Limited in the Municipality of Metropolitan Toronto, save and except Distribution Manager and persons above the rank of Distribution Manager" (16 employees in unit)

Number of names of persons on revised voters' list	16
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	9

**3412-96-R:** Canadian Union of Public Employees (Applicant) v. Sudbury and District Health Unit (Respondent)

Unit: "all employees of the Sudbury and District Health Unit employed in Home Care, save and except Supervisor, persons above the rank of Supervisor, and persons for whom a trade union held bargaining rights on the date of application" (383 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	383
Number of persons who cast ballots	164
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	160
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	138
Number of ballots marked against applicant	22
Number of ballots segregated and not counted	4

**3416-96-R:** United Steelworkers of America (Applicant) v. Ogden Palladium Services (Canada) Inc. (Respondent)



Unit: "all employees of Ogden Palladium Services (Canada) Inc. engaged in cleaning services in the City of Kanata, save and except supervisors and persons above the rank of supervisor" (80 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	80
Number of persons who cast ballots	71
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	61
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	3
Number of ballots marked in favour of applicant	38
Number of ballots marked against applicant	21
Number of ballots segregated and not counted	9

**3420-96-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Russo Foods 90 Limited (Respondent)

Unit: "all employees of Russo Foods 90 Limited in the Municipality of Metropolitan Toronto, save and except department manager, persons above the rank of department manager, warehouse employees, truck drivers, controller, confidential executive secretary, and commission sales staff" (10 employees in unit)

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	2

**3466-96-R:** Masonry Council of Unions Toronto and Vicinity (Applicant) v. Brookfield Homes (Respondent)

Unit: "all construction labourers, in the employ of the Brookfield Homes in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (2 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0

**3481-96-R:** The Association of Allied Health Professionals: Ontario (Applicant) v. Women's College Hospital (Respondent)

Unit #1: "all paramedical employees of Women's College Hospital in the Regional Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week, students in training, and persons for which any trade union held bargaining rights as of January 29, 1997" (100 employees in unit) (Having regard to the agreement of the parties) (Clarity Note)

Number of names of persons on revised voters' list	137
Number of persons who cast ballots	79
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	57
Number of segregated ballots cast by persons whose names appear on voter's list	11

Number of segregated ballots cast by persons whose names do not appear on voters' list	11
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	42
Number of ballots marked against applicant	23
Number of ballots segregated and not counted	14

Unit #2: "all paramedical employees of Women's College Hospital in the Regional Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, persons regularly employed for more than 24 hours per week, students in training, and persons for which any trade union held bargaining rights as of January 29, 1997" (100 employees in unit) (Having regard to the agreement of the parties) (Clarity Note)

Number of names of persons on revised voters' list	137
Number of persons who cast ballots	79
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	57
Number of segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names do not appear on voters' list	11
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	42
Number of ballots marked against applicant	23
Number of ballots segregated and not counted	14

**3545-96-R:** United Food and Commercial Workers International Union Local 175 (Applicant) v. Thrifty Canada Ltd. (Respondent)

Unit: "all employees of Thrifty Canada, Ltd. c.o.b. as Thrifty Car Rental employed at 6040 Indian Line in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, mechanics and assistant mechanics, office, clerical and sales staff, shuttle drivers and persons in bargaining units for which any trade union held bargaining rights as of February 4, 1997" (23 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	36
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	23
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	9

**3586-96-R:** Canadian Health Care Workers (C.H.C.W.) (Applicant) v. Winston Hall Nursing Homes Ltd., c.o.b. as Winston Park Nursing Home and Winston Park Retirement Home (Respondent) v. London & District Service Workers' Union, Local 220 (Intervener)

Unit #2: "all nursing home employees of Winston Hall Nursing Homes Ltd., Kitchener, regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor, registered and graduate nurses, office and clerical staff" (27 employees in unit)

Number of names of persons on revised voters' list	110
Number of persons who cast ballots	71
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	71
Number of ballots marked in favour of applicant	36
Number of ballots marked in favour of intervener	35

**3650-96-R:** I W A-Canada (Applicant) v. Ignace Saw (Respondent)

Unit: "all employees of 917360 Ontario Ltd. c.o.b. as Ignace Saw at its sawmill and mill yard in the Townships of Ignace and Osaquon, save and except supervisors, persons above the rank of supervisor, office and sales staff" (17 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	17
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	1

**3684-96-R:** United Food and Commercial Workers International Union (Applicant) v. East Coast Holdings Limited (Respondent)

Unit: "all employees of East Coast Holdings Limited c.o.b. as Tim Horton's Cochrane in the Town of Cochrane, save and except assistant store manager and persons above the rank of assistant store manager" (22 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	22
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	1

**3693-96-R:** United Steelworkers of America (Applicant) v. T.G. Metal Fabricating Limited (Respondent)

Unit: "all employees of T.G. Metal Fabricating Ltd. in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff" (40 employees in unit)

Number of names of persons on revised voters' list	40
Number of persons who cast ballots	40
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	38
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	26
Number of ballots marked against applicant	11
Number of ballots segregated and not counted	2

**3704-96-R:** Canadian Union of Public Employees (Applicant) v. Muskoka Family Focus & Children's Place (Respondent)

Unit: "all employees of Muskoka Family Focus and Children's Place, save and except supervisors, persons above the rank of supervisor, administrative support secretary and accounting clerk" (36 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	27
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	27
Number of ballots marked in favour of applicant	18
Number of ballots marked against applicant	9

**3706-96-R:** United Automobile, Aerospace & Agricultural Implement Workers of America, UAW (Applicant) v. Speedy Auto Glass Limited c.o.b. as Speedy Auto & Window Glass (Respondent)

Unit: "all employees of Speedy Auto Glass Limited c.o.b. as Speedy Auto & Window Glass at the following locations: 1. 5118 - Etobicoke - 724 The Queensway; 2. 5151 - Markham - 8 Laidlaw Blvd.; 3. 5108 - Newmarket -



25 George Street; 4. 5111 - North York - 3694 Bathurst Street; 5. 5115 - Rexdale - 321 Rexdale Blvd.; 6. 5113 - Mobile - (Toronto) - 3694 Bathurst Street; 7. 5110 - Richmond Hill - 10605 Yonge Street; 8. 5112 - Scarborough - 1971 Lawrence Ave.; 9. 5116 - Scarborough - 3790 Kingston Road; 10. 5114 - Thornhill - 180 Steeles Ave. E.; 11. 5104 - Toronto - 1660 Bloor St. W.; 12. 5109 - Toronto - 1439 Danforth; 13. 5117 - Toronto - 140 Simcoe St.; 14. 5107 - Yorkdale - 1 Yorkdale Road; save and except supervisors and persons above the rank of supervisor" (37 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	43
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	32
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	4

**3708-96-R:** United Steelworkers of America (Applicant) v. Canadian Liquid Air Ltd. (Respondent)

Unit: "all employees of Canadian Liquid Air Ltd. in the City of London, save and except team leaders, and persons above the rank of team leader, office, clerical, sales staff, liquid bulk drivers and students employed during the school vacation period" (11 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	2

**3746-96-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Thrifty Canada Ltd. (Respondent)

Unit: "all employees of Thrifty Canada Ltd. at its corporate locations, listed at 3570 Hurontario Street in the City of Mississauga and in the City of Vaughan, save and except area supervisors, persons above the rank of area supervisor and persons in bargaining unit for which any trade union held bargaining rights as of February 13th, 1997" (12 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of applicant	9

**3761-96-R:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Rexdale Electrical Contractors Ltd. (Respondent)

Unit: "all electricians and electricians' apprentices in the employ of Rexdale Electrical Contractors Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all electricians and electricians' apprentices in the employ of Rexdale Electrical Contractors Ltd. in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	7

Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	6
Number of segregated ballots cast by persons whose names appear on voters' list	1
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

**3775-96-R:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Maplewood Carpentry (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Maplewood Carpentry in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Maplewood Carpentry in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0

**3776-96-R:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. E. Pivetta & Sons (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of E. Pivetta & Sons in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of E. Pivetta in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0

**3779-96-R:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. C & P Contracting (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of C & P Contracting in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of C & P Contracting in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (16 employees in unit)

Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10

Number of spoiled ballots	1
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	2

**3780-96-R:** Service Employees International Union, Local 204, Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. Paragon Health Care (Ontario) Inc., O/A Casa Verde Retirement Home (Respondent)

Unit #1: "all employees of Paragon Health Care (Ontario) Inc. O/A Casa Verde Retirement Home in Metropolitan Toronto, save and except Supervisors, persons above the rank of supervisor, office and clerical staff, persons regularly employed for not more than twenty-two and one-half hours per week and students employed during the school vacation period" (30 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	5

Unit #2: "all employees regularly employed for not more than twenty-two and one-half hours per week and students employed during the school vacation period of Paragon Health Care (Ontario) Inc. O/A Casa Verde Retirement Home in Metropolitan Toronto, save and except Supervisors, persons above the rank of supervisor, office and clerical staff" (30 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	29
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	5

**3798-96-R:** United Steelworkers of America (Applicant) v. United Steelworkers of America, Local Union 2251 (Respondent)

Unit: "all employees of United Steelworkers of America, Local Union 2251 in the City of Sault Ste. Marie, save and except Executive Officers and persons for whom any trade union held bargaining rights as of February 18, 1997" (7 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0

**3811-96-R:** Teamsters Local Union No. 879 (Applicant) v. Acryx Industries Inc. (Respondent)

Unit: "all employees of Acryx Industries Inc. in the Regional Municipality of Niagara, save and except Supervisors, persons above the rank of Supervisor, office and sales staff" (25 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	50
Number of persons who cast ballots	44
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	33
Number of segregated ballots cast by persons whose names appear on voter's list	11
Number of ballots marked in favour of applicant	22
Number of ballots marked against applicant	19



Number of ballots segregated and not counted

3

**3818-96-R:** Canadian Union of Public Employees (Applicant) v. Humber River Regional Hospital, Church Street Site (Respondent)

Unit #1: “all employees regularly employed for less than 24 hours per week at the Humber River Regional Hospital, Church Street Site, save and except professional medical staff, graduate nursing staff, under-graduate nurses, graduate pharmacists, under-graduate pharmacists, graduate dieticians, technical personnel, supervisors, persons above the rank of supervisor, operating engineers, maintenance personnel, office staff and employees in the bargaining unit for which any trade union held bargaining rights as of February 19, 1997” (113 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	145
Number of persons who cast ballots	28
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

Unit #2: “all office and clerical employees regularly employed for less than 24 hours per week at the Humber River Regional Hospital, Church Street Site, save and except supervisors, persons above the rank of supervisor, secretaries to the: President, Vice-Presidents and Chief of Staff, Human Resource Staff, Business Office Manager, Co-ordinator of Medical Peer Review, Clinical Trails Assistant and employees in the bargaining unit for which any trade union held bargaining rights on February 19, 1997,” (113 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	145
Number of persons who cast ballots	28
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

**3822-96-R:** Ontario Nurses' Association (Applicant) v. Placement Coordination Services of the Family Counselling Services of Peterborough (Respondent)

Unit: “all employees employed by the Placement Coordination Services of the Family Counselling Services of Peterborough, save and except the Program Manager and persons above the rank of Program Manager” (6 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	6
Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0

**3871-96-R:** Canadian Union of Public Employees (Applicant) v. The Hastings-Prince Edward County Roman Catholic Separate School Board (Respondent)

Unit: “all office and clerical staff of The Hastings-Prince Edward County Roman Catholic Separate School Board in the city of Belleville, save and except Senior Secretaries, persons above the rank of Senior Secretary and persons for whom a trade union held bargaining rights as of February 20, 1997” (10 employees in unit) (Having regard to the agreement of the parties) (Clarity Note)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	1

**3900-96-R: International Association of Machinists and Aerospace Workers (Applicant) v. Samuel Lunenfeld Research Institute (Respondent)**

Unit: "all employees employed as research annex staff by the Samuel Lunenfeld Research Institute located at 600 University Ave. in the City of Toronto, save and except Supervisors, persons above the rank of Supervisor, office and sales staff" (14 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	9
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

**3911-96-R: Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Payton Carpentry (Respondent)**

Unit: "all carpenters and carpenters' apprentices in the employ of Payton Carpentry in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of Payton Carpentry in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non- working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0

**3919-96-R: Brewery, General and Professional Workers' Union (Applicant) v. The Toronto Hospital (Respondent) v. International Union, United Plant Guard Workers Of America, Local 1962 (Intervener)**

Unit: "all employees of The Toronto Hospital employed as security officers at The Toronto Hospital, the General Division, at its University Avenue complex in Metropolitan Toronto and those employees at the Western Division at 399 Bathurst Street in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, clerical staff and those covered by subsisting collective agreements" (29 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	25
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of ballots marked in favour of applicant	24
Number of ballots marked in favour of intervener	1

**3958-96-R: Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. International Green (Respondent)**

Unit: "all carpenters and carpenters' apprentices in the employ of International Green in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, and all carpenters and carpenters' apprentices in the employ of International Green in all sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and

institutional sector, save and except non- working foremen and persons above the rank of non-working foreman” (2 employees in unit)

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

**3973-96-R:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Ridley Web, a Division of Southam Inc. (Respondent)

Unit: “all employees of Ridley Web, a Division of Southam Inc., located at 380 Vansickle Road in the City of St. Catharines, save and except sales, office, supervisors, those above the rank of supervisors and persons employed for less than 24 hours a week” (19 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	3

**3993-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Findlay Industries Ltd. (Respondent)

Unit: “all employees of Findlay Industries Ltd. in the City of Chatham, save and except supervisors, persons above the rank of supervisor, office and sales staff” (9 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	3

**3994-96-R:** Ontario Public Service Employees Union (Applicant) v. Women in Transition (Respondent)

Unit: “all employees of Women in Transition in the Municipality of Metropolitan Toronto, save and except the Assistant Manager of Administrative Services, House Supervisors and persons above the rank of Assistant Manager of Administrative Services and House Supervisor” (31 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	24
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	23

**4034-96-R:** Teamsters Local Union 938 (Applicant) v. Maxxim Medical Canada Limited (Respondent)



Unit: “all employees of Maxxim Medical Canada Limited in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, office and sales staff, persons employed for not more than 24 hours per week and students employed during the school vacation period” (101 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters’ list	109
Number of persons who cast ballots	102
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	101
Number of segregated ballots cast by persons whose names appear on voter’s list	1
Number of ballots marked in favour of applicant	58
Number of ballots marked against applicant	43
Number of ballots segregated and not counted	1

**4062-96-R:** Hotel Employees Restaurant Employees Union, Local 75 (Applicant) v. Lark Hospitality Inc., carrying on business as The Old Mill (Respondent)

Unit: “all employees of Lark Hospitality Inc., carrying on business as The Old Mill in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, sales, office and clerical staff, security staff and employees covered by a subsisting Collective Agreement” (60 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters’ list	169
Number of persons who cast ballots	136
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	135
Number of segregated ballots cast by persons whose names appear on voter’s list	1
Number of ballots marked in favour of applicant	72
Number of ballots marked against applicant	63
Number of ballots segregated and not counted	1

### Applications for Certification Dismissed Without Vote

**3662-96-R:** Hospitality & Service Trades Union, Local 261 (Applicant) v. Canadian Forces Central Fund/Canex (Respondent)

**3759-96-R:** Canadian Health Care Workers (C.H.C.W.) (Applicant) v. Trinity Village Care Centre (Respondent) v. London and District Service Workers’ Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Intervener)

### Applications for Certification Dismissed Subsequent to Vote

**1868-96-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Medcon Mechanical Ltd. (Respondent)

Unit: “all plumbers and plumbers’ apprentices, steamfitters and steamfitters’ apprentices in the employ of Medcon Mechanical Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all plumbers and plumbers’ apprentices, steamfitters and steamfitters’ apprentices in the employ of Medcon Mechanical Ltd. in all other sectors of the construction industry in the Regional Municipality of Niagara and that portion of the Regional Municipality of Haldimand-Norfolk coming within the former County of Haldimand, save and except non- working foremen and persons above the rank of non-working foreman.” (32 employees in unit)

Number of names of persons on revised voters’ list	4
Number of persons who cast ballots	4
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	4

**1912-96-R:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Kraft Canada Inc. (Respondent)

Unit: "all employees of Kraft Canada Inc. at 1440 Birchmount Road, Scarborough, Ontario, save and except supervisors, persons above the rank of supervisor, office and sales staff" (60 employees in unit)

Number of names of persons on revised voters' list	61
Number of persons who cast ballots	58
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	56
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	28
Number of ballots segregated and not counted	2

**3269-96-R:** Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. Eastshire Developments Inc. (Viewmark Homes Ltd.) (Respondent)

Unit: "all construction labourers, journeymen and apprentice bricklayers, journeymen and apprentice carpenters in the employ of the responding employer in all sectors of the construction industry within the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, save and except non-working foremen and persons above the rank of non-working foreman" (32 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

**3651-96-R:** United Food & Commercial Workers, Local 206 chartered by the United Food and Commercial Workers International Union, CLC, AFL-CIO (Applicant) v. 928598 Ontario Inc. (Respondent)

Unit: "all employees of the responding party employed at 3998 Walker Road, Windsor and 1920 Ottawa Street, Windsor, save and except managers and persons above the rank of manager" (45 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	45
Number of persons who cast ballots	41
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	40
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	30

**3694-96-R:** Service Employees International Union, Local 204, Affiliated with the S.E.I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. St. Michael's Hospital (Respondent)

Unit: "all office and clerical staff employed by St. Michael's Hospital in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, the Secretary to the President and C.F.O., the Secretary to the Assistant Administrator, the Secretary to the Director of Nursing, the Secretary to the Director of Finance, Personnel Assistant, Medical Staff Secretary, Payroll Assistant, technical and professional staff, and persons in bargaining units for which any trade union held bargaining rights as of February 11th, 1997" (353 employees in unit) (Having regard to the agreement of the parties) (Clarity Note)

Number of names of persons on revised voters' list	354
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Number of persons who cast ballots	274
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	215
Number of segregated ballots cast by persons whose names appear on voter's list	41
Number of segregated ballots cast by persons whose names do not appear on voters' list	18
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	77
Number of ballots marked against applicant	137
Number of ballots segregated and not counted	59

**3760-96-R:** Office and Professional Employees International Union (Applicant) v. Cochrane-Iroquois Falls, Black River-Matheson Board of Education (Respondent)

Unit: "all education assistants employed by the Cochrane-Iroquois Falls Black River-Matheson Board of Education, save and except supervisors and persons above the rank of supervisor and persons covered by existing collective agreements as of February 14, 1997" (7 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	4

**3774-96-R:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Can Do Carpentry (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Can Do Carpentry in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of Can Do Carpentry in all other sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked against applicant	4

**3777-96-R:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. National Carpentry (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of National Carpentry in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of National Carpentry in all other sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	0

**3812-96-R:** Brewery, General and Professional Workers' Union (Applicant) v. Price Costco Canada Inc. (Respondent)



Unit: "all employees of the Responding Party at 3025 Ridgeway Drive, in the Regional Municipality of Peel, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week and students employed during the summer vacation period" (92 employees in unit)

Number of names of persons on revised voters' list	92
Number of persons who cast ballots	90
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	90
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	19
Number of ballots marked against applicant	71

**3821-96-R:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rochon Building Corporation (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Rochon Building Corporation in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all carpenters and carpenters' apprentices in the employ of Rochon Building Corporation in all other sectors of the construction industry in the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, save and except non-working foremen and persons above the rank of non-working foreman" (0 employees in unit)

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	3

**3846-96-R:** United Steelworkers of America (Applicant) v. Carecor Security Services Inc. (Respondent)

Unit: "all employees of Carecor Security Services Inc. at Scarborough General Hospital in the Municipality of Metropolitan Toronto, save and except Patrol Supervisor and persons above the rank of Patrol Supervisor" (10 employees in unit)

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	3

**3851-96-R:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Guspro Inc. (Respondent)

Unit: "all employees of Guspro Inc. in the City of Chatham, save and except supervisors, those above the rank of supervisor, office and sales staff and engineering department" (25 employees in unit) (Having regard to the agreement of the parties)

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	25
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	19
Number of ballots segregated and not counted	0

**3888-96-R:** United Food and Commercial Workers International Union (Applicant) v. White Rose Crafts and Nursery Sales Ltd. (Respondent)

Unit: "all employees of White Rose Crafts and Nursery Sales Ltd. employed at 525 Hespeler Street, Cambridge, Ontario, N1R 6J2, save and except students employed during the summer vacation period only, the assistant manager, the manager, and persons above the rank of manager" (34 employees in unit)

Number of names of persons on revised voters' list	45
Number of persons who cast ballots	38
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	33
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	22
Number of ballots segregated and not counted	2

**3913-96-R:** Labourers' International Union of North America Local 183 (Applicant) v. Hurley Corporation (Respondent)

Unit: "all employees of Hurley Corporation at Sheridan College, Davis Campus, 7899 McLaughlin Dr., in the City of Brampton, save and except non-working supervisors and persons above the rank of non-working supervisor" (11 employees in unit)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	4

**3943-96-R:** Teamsters Local Union No. 419 (Applicant) v. Canadian Waste Services Inc. (Respondent)

Unit: "all employees of Canadian Waste Services Inc. in the Regional Municipality of York, save and except supervisors, persons above the rank of supervisor, dispatchers, office and sales staff" (24 employees in unit)

Number of names of persons on revised voters' list	33
Number of persons who cast ballots	29
Number of ballots, excluding segregated ballots, cast by persons whose names appear on voters' list	29
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	15

**4019-96-R:** United Automobile, Aerospace & Agricultural Implement Workers of America, UAW (Applicant) v. Double D Catering & Vending division of Double D Distributors Ltd. (Respondent)

Unit: "#1 all employees of Double D Catering & Vending Services, a division of Double D Distributors Limited, at the City of Chatham, save and except managers and anyone above the position of manager; #2 all employees of Double D Catering & Vending Services, a division of Double D Distributors Limited, at the City of Sarnia, save and except managers and anyone above the position of manager." (15 employees in unit)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	5
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	15
Number of ballots segregated and not counted	3

**4026-96-R:** Labourers' International Union of North America, Local 183 (Applicant) v. Sandbury Building Corporation (Respondent)

Unit: "all construction labourers, journeymen and apprentice Bricklayers, Journeymen and apprentice Carpenters in the employ of the Sandbury Building Corporation in all sectors of the construction industry within the Municipality of Metropolitan Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	3

**4045-96-R:** Brewery, General and Professional Workers' Union (Applicant) v. Med-Chem Health Care Limited (Respondent)

Unit: "all employees of the Med-Chem Laboratories Limited in the City of St. Catharines, save and except supervisors and persons above the rank of supervisor" (5 employees in unit)

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	4

**4049-96-R:** United Steelworkers of America (Applicant) v. Beck Taxi Limited (Respondent)

Unit: "all employees of Beck Taxi Limited employed as Order Takers and or Dispatch System Operators in the Dispatch Office of the employer located in the City of Metropolitan Toronto, save and except Office and Clerical Staff, Salespersons, Supervisors and persons above the rank of Supervisor" (30 employees in unit)

Number of names of persons on revised voters' list	29
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	18
Number of ballots segregated and not counted	3

## Applications for Certification Withdrawn

**3473-96-R:** Service Employees International Union, Local 220 (Applicant) v. St. Joseph's Health Centre (London) (Respondent)

**3540-96-R:** Ontario Secondary School Teachers' Federation (Applicant) v. University of Guelph (Respondent) v. University of Guelph Staff Association ("UGSA") (Intervener)

**3615-96-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and the United Association of Journeymen



and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Grey Contracting (Respondent)

**3972-96-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. David Martin Enterprises (London) Limited (Respondent)

**4095-96-R:** Millwright District Council of Ontario and its Local 1007 (Applicant) v. Southern Systems Inc. (Respondent)

**4272-96-R:** Labourers' International Union of North America, Local 183 (Applicant) v. S.F. Masonry (Respondent) v. The International Union of Bricklayers and Allied Craftsmen, Local 2 (Intervener)

**4318-96-R:** Drywall, Acoustic Lathing and Insulation, Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. S.G. Interiors (Respondent)

## APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

**1741-95-R:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Besa Interiors Ltd. and Cromax Drywall (Respondents) (Withdrawn)

**4147-95-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Arwen Flooring Limited and Applied Industrial Floor Systems Ontario Limited (Respondents) (Withdrawn)

**4216-95-R:** The United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. Michael York (Toronto) Limited c.o.b. as Campbellford I.G.A. and Richter & Partners Inc., and Oshawa Foods Division The Oshawa Group Limited and Knechtel Food Market (Respondents) (Withdrawn)

**0654-96-R:** United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Projecta Engineering & Construction Inc., Michael Demko carrying on business as A. Demko Construction and Renovation (Respondents) (Granted)

**1467-96-R:** Drywall Acoustic Lathing and Insulation Local 675 and United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Belmont Drywall and Acoustics Ltd. and Belmont Drywall (Concord) Ltd. and Montebello Drywall & Acoustic Systems Inc. (Respondents) (Withdrawn)

**2235-96-R:** International Union of Bricklayers and Allied Craftsmen, Local 28 (Applicant) v. Central Terrazzo & Tile of Sudbury Limited and Benedetti's Cement & Tile (Respondents) (Withdrawn)

**2450-96-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Vandenburg Contracting (1982) Ltd., 751836 Ontario Inc. (Respondents) (Granted)

**2575-96-R:** United Steelworkers of America (Applicant) v. Windsor Airline Limousine Services Limited o/a Veteran Cab Company and Capital Cab Company and those parties listed on Schedule "A" (Respondents) (Terminated)

**3183-96-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. 1001836 Ontario Ltd. c.o.b. as Everest Electrical Contracting and 1212917 Ontario Ltd. c.o.b. as GDS Building Systems (Respondents) (Granted)

**3656-96-R:** Canadian Union of Operating Engineers and General Workers (Applicant) v. Standard Life Assurance Co. and Angus Consulting Management Limited and Ainsworth Electric Co. Ltd. (Respondents) (Endorsed Settlement)

**3717-96-R:** Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. Viewmark Homes Ltd., Cherry Hill Developments Inc., Eastshire Developments Inc. (Respondents) (Withdrawn)

## **SALE OF A BUSINESS**

**1741-95-R:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Besa Interiors Ltd. and Cromax Drywall (Respondents) (Withdrawn)

**4147-95-R:** Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Arwen Flooring Limited and Applied Industrial Floor Systems Ontario Limited (Respondents) (Withdrawn)

**4216-95-R:** The United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. Michael York (Toronto) Limited c.o.b. as Campbellford I.G.A. and Richter & Partners Inc., and Oshawa Foods Division The Oshawa Group Limited and Knechtel Food Market (Respondents) (Withdrawn)

**0654-96-R:** United Brotherhood of Carpenters and Joiners of America, Local 1669 (Applicant) v. Projecta Engineering & Construction Inc., Michael Demko carrying on business as A. Demko Construction and Renovation (Respondents) (Granted)

**1407-96-R:** Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 880 (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union (CAW-Canada), Local 444, LEF International Inc., McLean Brothers Fisheries Inc., and LEF McLean Brothers International Inc. (Respondents) (Granted)

**1467-96-R:** Drywall Acoustic Lathing and Insulation Local 675 and United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Belmont Drywall and Acoustics Ltd. and Belmont Drywall (Concord) Ltd. and Montebello Drywall & Acoustic Systems Inc. (Respondents) (Withdrawn)

**2235-96-R:** International Union of Bricklayers and Allied Craftsmen, Local 28 (Applicant) v. Central Terrazzo & Tile of Sudbury Limited and Benedetti's Cement & Tile (Respondents) (Withdrawn)

**2450-96-R:** Labourers' International Union of North America, Local 1059 (Applicant) v. Vandenburg Contracting (1982) Ltd., 751836 Ontario Inc. (Respondents) (Granted)

**2575-96-R:** United Steelworkers of America (Applicant) v. Windsor Airline Limousine Services Limited o/a Veteran Cab Company and Capital Cab Company and those parties listed on Schedule "A" (Respondents) (Terminated)

**3183-96-R:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. 1001836 Ontario Ltd. c.o.b. as Everest Electrical Contracting and 1212917 Ontario Ltd. c.o.b. as GDS Building Systems (Respondents) (Granted)

## **APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS**

**1983-95-R; 3990-94-R; 4268-94-R; 4363-94-R; 4525-94-R:** Canadian Security Union (Applicant) v. Intercon Security Limited (Respondent) (Granted)

**1455-96-R:** Dominic Richichi (Applicant) v. International Association of Machinists and Aerospace Workers, Lodge 2332 (Respondent) v. Autofix Limited (Intervener)

Unit: "all employees of Autofix Limited in the City of Sault Ste. Marie, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period" (0 employees in unit) (Granted)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	2

**1552-96-R:** Shawn Evans, on his own behalf and on behalf of a group of employees of 729084 Ontario Limited, c.o.b. Premiere Cable Construction (Applicant) v. Labourers' International Union of North America, Ontario Provincial District Council, on its own behalf and on behalf of all other affiliated bargaining agents of Labourers' International Union of North America, including Local 527 (Respondent) v. 729084 Ontario Limited, c.o.b. as Premiere Cable Construction (Intervener)

Unit: "all construction labourers employed by its member companies in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman" (0 employees in unit) (Granted)

Number of names of persons on revised voters' list	23
Number of persons who cast ballots	23
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	23
Number of ballots segregated and not counted	0

**2136-96-R:** Kenneth M. Fawcett on behalf of himself and on behalf of all petitioning drivers (Applicant) v. Retail Wholesale Canada, Canadian Service Sector, Division of the United Steelworkers of America and Local 1688 The Ontario Taxi Union (Respondent) v. Metro Cab Company Limited, Yellow Cab Company Inc., Arts' Taxi Limited, PELS Investments Limited, A&A Taxi, ABC Taxi, Go West Taxi, Northwest Taxi and Don Mills Taxi c.o.b. as The Metro Cab Group of Companies, and Associates (Intervener)

Unit: "all full-time and part-time dependent contractors operating under the roof signs of the Company which is currently operating as Metro Cab and Yellow Cab in Metropolitan Toronto save and except supervisors, persons above the rank of supervisor, inspectors, dispatchers, calltakers, maintenance staff, office and clerical staff and multi-plate/multi-car owners/lessees." (310 employees in unit) (Dismissed)

Number of names of persons on revised voters' list	314
Number of persons who cast ballots	255
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	178
Number of segregated ballots cast by persons whose names appear on voter's list	34
Number of segregated ballots cast by persons whose names do not appear on voters' list	43
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	96
Number of ballots marked against respondent	81
Number of ballots segregated and not counted	77

**2530-96-R:** Albert Banjoko, Silvio Gordon, Hassan Dabir Shahsahebi and Ali Abdul Kadir Elmi (Applicant) v. The Retail Wholesale Canada Canadian Service Sector Division of the United Steelworkers of America, Local 1688 (Respondent) v. Associated Toronto Taxi-Cab Co-operative Limited, Co-op Taxi Associates' Committee (Interveners)

Unit: "all full-time and part-time dependent contractors operating under the roof sign Co-op in Metropolitan Toronto save and except supervisors, persons above the rank of supervisor, inspectors, dispatchers, calltakers, maintenance staff, office and clerical staff and multi-plate/multi-car owners/leasees" (232 employees in unit) (Withdrawn)

**3070-96-R:** Maria Dias, on her own behalf and on behalf of a group of employees of Lorne Murphy Foods Limited (Applicant) v. Hospitality and Service Trades Union, Local 261 (Respondent) v. Lorne Murphy Foods Limited (Intevener)



Unit: “all employees of Lorne Murphy Foods Limited at the Tunney’s Pasture locations, with the exception of the following: General Manager, Assistant General Manager, Area Supervisor, Stats Canada Manager, Accountant, Payroll Clerk/Buyer, Secretary to the General Manager and Executive Chef” (65 employees in unit) (Granted)

Number of names of persons on revised voters’ list	64
Number of persons who cast ballots	58
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	17
Number of ballots marked against respondent	39
Number of ballots segregated and not counted	1

**3598-96-R:** Della Wolfenden and Deirdre Farrell (Applicant) v. Office and Professional Employees International Union, Local 468 (Respondent) v. Thames Valley Children’s Centre (Intervener)

Unit: “all employees of the Employer in the City of London, except the Executive Secretaries, Professionals, Program Heads, and those above the rank of Program Head as certified by the Ontario Labour Relations Board” (37 employees in unit) (Dismissed)

Number of names of persons on revised voters’ list	37
Number of persons who cast ballots	33
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	33
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	19
Number of ballots marked against respondent	14

**3709-96-R:** New Tecumseth Park’s, Recreation & Culture Staff (Applicant) v. International Union of Operating Engineers Local 793 (Respondent) v. The Corporation of the Town of New Tecumseth (Intervener)

Unit: “all employees of the Corporation of the Town of New Tecumseth in its Parks, Recreation and Culture Department in the Town of New Tecumseth, save and except Department Managers, persons above the rank of Department Manager, office, clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period” (10 employees in unit) (Granted)

Number of names of persons on revised voters’ list	10
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	9
Number of segregated ballots cast by persons whose names appear on voter’s list	0
Number of segregated ballots cast by persons whose names do not appear on voters’ list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	8
Number of ballots segregated and not counted	0

**3755-96-R:** Peter Spencer (Applicant) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647 (Respondent) v. The Hostess Frito-Lay Company (Intervener)

Unit: “all employees of the Hostess Frito-Lay Company at St. Catharines, Ontario, save and except supervisors and persons above the rank of supervisors, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period” (18 employees in unit) (Granted)

Number of names of persons on revised voters’ list	18
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter’s list	15
Number of segregated ballots cast by persons whose names do not appear on voters’ list	1
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	12

Number of ballots segregated and not counted

1

**3800-96-R:** Leslie Foster (Applicant) v. Ontario Nurses' Association (Respondent) v. Kristus Darzs Latvian Home (Intervener)

Unit: "all Registered and Graduate Nurses employed by the Kristus Darzs Latvian Home in the City of Vaughan, save and except the Director of Nursing and persons above the rank of Director of Nursing" (11 employees in unit) (Granted)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	9
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	1

**3901-96-R:** David Singleton (Applicant) v. Graphic Communications International Union, Local 100M (Respondent) v. Haddon Press Ltd. (Intervener) (Dismissed)

**3964-96-R:** Leo Mendonca (Applicant) v. Sheet Metal Workers' International Association, Local Union No. 30 (Respondent) v. 1103864 Ontario Ltd. c.o.b. Royal Food Equipment (Intervener)

Unit: "all employees employed at Royal Food Equipment (1103864 Ontario Ltd.) at 370 Tapscott Road, Unit #5, Scarborough, Ontario, M1B 3C4, save and except the persons above the rank of working foreman, sales and office staff and store help" (6 employees in unit) (Granted)

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	7
Number of ballots segregated and not counted	1

**3985-96-R:** Mark Robinson (Applicant) v. Retail Wholesale Canada, Canadian Service Sector Division of the United Steel Workers of America and Local 414 (Respondent) v. 947485 Ontario Ltd. c.o.b. as Voyageur Transportation Services, Checker Limousine and Airport Service, Multi/Lease - Multi/Car Operators and Multi/Car Owner Operators (Intervener)

Unit: "all employees of 947465 Ontario Ltd. carrying on business as Voyageur Transportation Services, Checker Limousine and Airport Service, Multi/Lease-Multi/Car Operators and Multi/Car Owner Operators in the City of London and North Dorchester and of multi-lease/multi-car operators, and multi-car owner operators, save and except supervisors, persons above the rank of supervisors, dispatchers, call takers, office and clerical staff, mechanics, maintenance staff and the multi-car owner operators, themselves" (39 employees in unit) (Granted)

Number of names of persons on revised voters' list	68
Number of persons who cast ballots	53
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	51
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of respondent	21
Number of ballots marked against respondent	32

**3995-96-R:** Famous Players Inc. (Applicant) v. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Respondent) (Withdrawn)

**4007-96-R:** Karen Hobbs and April McMillan, on their own behalf and on behalf of a group of employees of 836541 Ontario Ltd. c.o.b. as Loeb Carleton Place (Applicant) v. Retail, Wholesale Canada, Canadian Service Sector Division of United Steelworkers of America, Local 414 (Respondent) v. 836541 Ontario Limited c.o.b. as Loeb Carleton Place (Intervener)

Unit: "all employees of 836541 Ontario Ltd. c.o.b. as Loeb Carleton Place in the Town of Carleton Place save and except Department Managers, persons above the rank of Department Manager and Office and Clerical Staff" (62 employees in unit) (Dismissed)

Number of names of persons on revised voters' list	64
Number of persons who cast ballots	47
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	46
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	35
Number of ballots marked against respondent	10
Number of ballots segregated and not counted	1

**4016-96-R:** Antonio Defusco et al (Applicant) v. Teamsters Local Union 230, Ready Mix, Building Supplies, Hydro & Construction Drivers, Warehousemen & Helpers (Respondent) v. Watson Building Supplies Inc. (Intervener)

Unit: "all employees of Watson Building Supplies Inc. situated at Barrie, Ontario, save and except foremen, persons above the rank of foreman, and office staff" (8 employees in unit) (Granted)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of ballots marked against respondent	8

**4020-96-R:** Duane Rose (Applicant) v. Christian Labour Association of Canada (Respondent) v. The Barrie & District Association for People with Special Needs, Adult Day Services Program (Intervener) (Dismissed)

**4024-96-R:** Clifford Wamboldt (Applicant) v. United Brotherhood of Carpenters & Joiners of America, Local Union 1072 (Respondent) v. Repla Limited (Intervener)

Unit: "all regular plant employees at Repla Limited, in the Town of Oakville, Ontario, or in any location within one hundred kilometres of Oakville save and except foreman/supervisors, persons above the rank of foreman, office, plant clerical, sales and service staff and persons regularly employed for not more than 24 hours per week, and students employed during any school vacation periods" (50 employees in unit) (Granted)

Number of names of persons on revised voters' list	51
Number of persons who cast ballots	46
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	46
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of respondent	17
Number of ballots marked against respondent	28
Number of ballots segregated and not counted	0



**4039-96-R:** Timmy R. Burling (Applicant) v. Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 880 (Respondent) v. 658620 Ontario Limited, c.o.b. as Haul All Services (Intervener) (Dismissed)

**4094-96-R:** Steve Martin (Applicant) v. Graphic Communications International Union, Local 517M (Respondent) v. The Aylmer Express Limited (Intervener)

Unit: "all employees of Aylmer Express Limited engaged at Aylmer, Ontario, save and except foremen, persons above the rank of foreman, drivers, editorial, advertising, sales, office and clerical staff" (16 employees in unit) (Granted)

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	16
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	16

## APPLICATIONS FOR DECLARATION OF UNLAWFUL LOCKOUT

**3655-96-U:** Canadian Union of Operating Engineers and General Workers (Applicant) v. Standard Life Assurance Co. and Angus Consulting Management Limited and Ainsworth Electric Co. Ltd. (Respondents) (Endorsed Settlement)

## COMPLAINTS OF UNFAIR LABOUR PRACTICE

**0842-95-U:** United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Vitullo Bros. Plumbing Co. Ltd. (Respondent) (Withdrawn)

**3065-95-U:** The Teamster Construction Council of Ontario (Applicant) v. The Construction Site Teamster Employer Bargaining Agency and Andy Pilat (Respondent) (Terminated)

**4217-95-U:** The United Food and Commercial Workers' International Union, Local 175 & 633 (Applicant) v. Michael York (Toronto) Limited c.o.b. as Campbellford I.G.A., and Richter & Partners Inc. and Oshawa Foods Division The Oshawa Group Limited and Knechtel Food Market (Respondents) (Withdrawn)

**1154-96-U:** Belmont Drywall Concord Ltd. (Applicant) v. Drywall Acoustic Lathing and Insulation, Local 675 of the United Brotherhood of Carpenters and Joiners of America; and John Morgan Lewis (Respondent) (Withdrawn)

**1526-96-U:** Janet Watts and all affected Members of U.F.C.W. Local 175 at Community Lifecare (Applicant) v. Kathie Chrysler, United Food and Commercial Workers International Union, Local 175 (Respondent) v. Community Lifecare Inc. (Intervener) (Withdrawn)

**1573-96-U:** Sylvia Henne (Applicant) v. Local ONA 188 (Respondent) (Withdrawn)

**1818-96-U:** National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. Friction Tech Inc., A Division of Brake Parts Inc. (Respondent) (Withdrawn)

**1824-96-U:** Trudy Morris (Applicant) v. United Steelworkers of America, Local 14857 (Respondent) (Dismissed)

**2077-96-U:** United Food and Commercial Workers International Union, Local 175 & 633 (Applicant) v. Kraft Canada Inc. (Respondent) (Dismissed)

**2120-96-U:** Local 582, Ontario Public Service Employees Union. President Mark Keilty for the Local (Applicant) v. Tom McGown of Ministry of Labour and Rose Buhagiar of Ministry of Solicitor General and Correctional Services (Respondents) (Withdrawn)

**2130-96-U:** Albert Fortier (Applicant) v. Long Lake Employees Association (Respondent) v. Long Lake Forest Products Inc. (Intervener) (Withdrawn)

**2383-96-U:** Local 1525 of the Canadian Union of Public Employees (Applicant) v. The Corporation of The City of Gloucester (Respondent) (Terminated)

**2509-96-U; 2776-96-U:** Retail Wholesale Canada, Canadian Service Sector Division of the United Steelworkers of America and Local 1688 The Ontario Taxi Union (Applicant) v. Kenneth M. Fawcett, Colin Kelly, Dan Hisson, Metro Cab Company Limited, Yellow Cab Company Inc., Arts' Taxi Limited, PELS Investments Limited, A & A Taxi, ABC Taxi, Go West Taxi, Northwest Taxi and Don Mills Taxi c.o.b. as the Metro Cab Group of Companies and its Associates (Respondents); Kenneth M. Fawcett on behalf of himself & on behalf of all petitioning drivers (Applicant) v. Retail Wholesale Canada, Canadian Service Sector, Division of the United Steelworkers of America and Local 1688 The Ontario Taxi Union, Kuldip Virk, Jehangir Khan and Guy Havell (Respondent) (Withdrawn)

**2553-96-U:** Canadian Union of Operating Engineers, and General Workers, Local 101 (Applicant) v. The Cadillac Fairview Corporation Limited (Respondent) (Withdrawn)

**2637-96-U:** Michael Beattie (Applicant) v. International Association of Machinists and Aerospace Workers, Local Lodge 1703 (Respondent) v. Dana Canada Inc. (Intervener) (Dismissed)

**2659-96-U:** Amos Goodale (Applicant) v. Labourers' International Union of North America, Local 837 (Respondent) v. The Board of Education for the City of Hamilton (Intervener) (Dismissed)

**2709-96-U:** Maureen Drew (Applicant) v. Service Employees Union, Local 210 (Respondent) v. Windsor Regional Hospital (Intervener) (Dismissed)

**2763-96-U:** Group of Employees Represented by Rene Dubeau, Leo Kelly, Eugene Weber and Bruce Cook (Applicant) v. National Automobile, Aerospace and Agricultural Implement Workers of Canada (CAW-Canada) and Local No. 222 CAW (Respondent) v. General Motors of Canada Limited, Peregrine Windsor Inc., Peregrine Oshawa, Inc. (Interveners) (Dismissed)

**2814-96-U:** Yoram Stein, Firew Gedamu, Ali Reza Zayhian Mohammad Mohammadkhani and Najibullah Akbari (Applicant) v. Guy Havel (Representative of Local 1688 of the Ontario Taxi Union) (Respondent) v. Associated Toronto Taxi-Cab Co-Operative Limited (Intervener) (Withdrawn)

**2899-96-U:** Arnold Ricketts, Norberto Cabral, Artigas Parma Gordon M. Osborne, Nelson Tripodi, Alfred Aquilina (Applicant) v. Amalgamated Transit Union, Local 1587 and Mr. Simon Clarke, (President) (Respondent) v. Toronto Area Transit Operating Authority ("Go Transit") (Intervener) (Withdrawn)

**2908-96-U:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Westview Electric Contractors Inc. (Respondent) (Withdrawn)

**3112-96-U:** Matt Mandziak (Applicant) v. Canadian Union of Public Employees, Local 1328, John Chavannes, Jane Rowan and Ralph Carnovale (Respondent) v. Metropolitan Separate School Board (Intervener) (Dismissed)

**3151-96-U:** International Union of Operating Engineers, Local 793 (Applicant) v. Spurr Bros. Ltd. (Respondent) (Endorsed Settlement)

**3171-96-U:** Lucille Shannon (Applicant) v. Local 9350 Jim Kmit (Union Representative) and George Bernard (Steward) (Respondent) (Withdrawn)

**3195-96-U:** Garry Davies (Applicant) v. The Crown in Right of Ontario Represented by Management Board of Cabinet (Respondent) (Dismissed)

**3348-96-U:** Andrew James Brown (Applicant) v. Beatrice Foods Inc. and AFL-CIO-CLC Local 440 (Respondents) (Withdrawn)

- 3357-96-U:** Kenneth W. Morgan (Applicant) v. Independent Paperworkers of Canada Local 69 (Respondent) v. MacMillan Bathurst Inc. (Intervener) (Withdrawn)
- 3397-96-U:** James Yeats (Applicant) v. Amalgamated Transit Union, Local 113 and (Respondent) v. Toronto Transit Commission (Intervener) (Dismissed)
- 3472-96-U:** Service Employees International Union, Local 220 (Applicant) v. St. Joseph's Health Centre (London) (Respondent) (Withdrawn)
- 3491-96-U:** Al Cimini (Applicant) v. C.U.P.E. Local 10 (Respondent) v. Corporation of the City of York (Intervener) (Granted)
- 3502-96-U:** Jovan Corba (Applicant) v. C.U.P.E. Local 3043, C.U.P.E. Local 2816, Women's College Hospital, The Hospital for Sick Children (Respondents) (Dismissed)
- 3544-96-U:** United Food and Commercial Workers International Union, Local 175 (Applicant) v. Russo Foods 90 Limited, Mario Russo and Carole Russo (Respondents) (Withdrawn)
- 3549-96-U:** Communications, Energy and Paperworkers Union of Canada (Applicant) v. Counterforce Inc. (Respondent) (Withdrawn)
- 3553-96-U:** United Steelworkers of America (Applicant) v. 984341 Ontario Limited (Respondent) (Withdrawn)
- 3576-96-U:** Joseph Persaud (Applicant) v. Veratec Canada (Respondent) (Dismissed)
- 3657-96-U:** Canadian Union of Operating Engineers and General Workers (Applicant) v. Standard Life Assurance Co. and Angus Consulting Management Limited and Ainsworth Electric Co. Ltd. (Respondents) (Endorsed Settlement)
- 3716-96-U:** Bricklayers, Masons Independent Union of Canada, Local 1 (Applicant) v. Cherry Hill Developments Inc., Viewmark Homes Ltd., Eastshire Developments Inc., The Stars of Brampton Inc. (Respondents) (Withdrawn)
- 3757-96-U:** Brian Linnett (Applicant) v. Les Industries Rol Mfg. (Canada) Ltee (Respondent) (Withdrawn)
- 3801-96-U:** Walter Ventura (Applicant) v. Teamsters Local Union 938 and Consolidated Fastrate Transport Inc. (Respondents) (Withdrawn)
- 3808-96-U:** Glen Anthony Soikie (Applicant) v. M.G.I. Packers Inc. Maple Freezers Limited (Respondent) (Withdrawn)
- 3882-96-U:** Dennis Alexander (Applicant) v. Chrysler Canada Ltd. (Respondent) (Dismissed)
- 3894-96-U:** International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Rexdale Electrical Contractors Ltd. (Respondent) (Withdrawn)
- 4015-96-U:** Joe Daignault and Canadian Health Care Workers (C.H.C.W.) (Applicant) v. London & District Service Workers' Union, Local 220 (Respondent) (Withdrawn)
- 4033-96-U:** Christine Case and Chadwick Blaauw (Applicant) v. Leah Casselman, Susan Walker, Patricia Hon-sberger and Brock Suddaby (Respondent) (Dismissed)
- 4121-96-U:** Canadian Union of Public Employees Local 1001 (Applicant) v. University of Windsor (Respondent) (Withdrawn)
- 4157-96-U:** Kenneth E. Wagar (Applicant) v. General Motors of Canada (Respondent) (Dismissed)
- 4196-96-U:** Carl Frizzell (Applicant) v. Premier Caskets (Respondent) (Dismissed)



**4243-96-U:** Pedro A. Cristales (Applicant) v. United Food & Commercial Workers International Union Local 633 (Respondent) (Dismissed)

## **APPLICATIONS FOR RELIGIOUS EXEMPTION**

**2694-95-M:** Granville Oliver Murray (Applicant) v. Retail Wholesale Canada, Active Taxi Ltd. (Respondents) (Dismissed)

**3887-96-M:** Elaine Anthony (Applicant) v. CUPE 1258, Leeds & Grenville County Board of Education (Respondents) (Withdrawn)

**3963-96-M:** Lucy Patry (Applicant) v. Ontario Public Service Employees Union and Community Living Timmins Integration Communautaire (Respondents) (Withdrawn)

## **APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT**

**3823-96-M:** Olsen Manufacturing Co. Inc. (Applicant) v. United Steelworkers of America (Respondent) (Granted)

## **JURISDICTIONAL DISPUTES**

**0293-96-JD:** Ironworkers District Council of Ontario and International Association of Bridge, Structural and Ornamental Ironworkers, Local 786 (Applicant) v. Jaddco Anderson Limited, United Brotherhood of Carpenters and Joiners of America, Local 446 (Respondents) (Granted)

**2510-96-JD:** Ecodyne Limited (Applicant) v. Labourers' International Union of North America, Local 1036, ("Labourers") and United Brotherhood of Carpenters and Joiners of America, Local 446 ("Carpenters") (Respondents) (Dismissed)

## **COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT**

**0727-96-OH:** Carl Booker (Applicant) v. Georgia Pacific Canada (Formerly Domtar Inc.) (Respondent) v. United Steelworkers of America (Intervener) (Withdrawn)

**1508-96-OH:** John Cabrera (Applicant) v. Stichsations Inc. (Respondent) (Withdrawn)

**3029-96-OH:** Ralph Vincent Gallicano (Applicant) v. The Corporation of the City of Mississauga (Respondent) (Withdrawn)

**3099-96-OH:** Betsabe Coccio-Monterrios (Applicant) v. Coffee Time (Respondent) (Withdrawn)

**3528-96-OH:** Paul Churly (Applicant) v. F.G. Lister Transportation Inc. (Respondent) (Withdrawn)

**3620-96-OH:** Garfield Martin (Applicant) v. Jet-A-Way Airport Parking (Respondent) (Withdrawn)

**3707-96-OH:** Melissa Steidman (Applicant) v. Paragon Protection Ltd. (Respondent) (Dismissed)

**3715-96-OH:** Brian Ball (Applicant) v. Metallurgical Services (Toronto) Limited (Respondent) (Withdrawn)

**3856-96-OH:** Craig W. Cameron (Applicant) v. Van-Rob Stampings Inc. (Respondent) (Withdrawn)

## **HOSPITAL LABOUR DISPUTES ARBITRATION ACT**

**3274-96-U:** Canadian Union of Public Employees and its Local 1532 (Applicant) v. Port Colborne General Hospital (Respondent) (Dismissed)

## **CROWN EMPLOYEES COLLECTIVE BARGAINING ACT (SEC. 36.1)**

**3032-96-M:** Ontario Public Service Employees Union (Applicant) v. Ontario Housing Corporation, and Metropolitan Toronto Housing Authority (Respondents) (Withdrawn)

## **CONSTRUCTION INDUSTRY GRIEVANCES**

**1257-94-G:** Labourers' International Union of North America - Local 247 (Applicant) v. Ellis-Don Limited (Respondent) (Dismissed)

**1739-95-G; 1740-95-G:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Besa Interiors Ltd., Cromax Drywall (Respondents) (Withdrawn)

**3472-95-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Toronto Dominion Bank (Respondent) (Granted)

**0768-96-G:** Labourers' International Union of North America, Local 527 (Applicant) v. Premier Cable Construction (Respondent) (Endorsed Settlement)

**1153-96-G; 1465-96-G; 1534-96-G; 2304-96-G; 2306-96-G:** Belmont Drywall Concord Ltd. (Applicant) v. Drywall Acoustic Lathing and Insulation, Local 675 of the United Brotherhood of Carpenters and Joiners of America (Respondent); United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Belmont Drywall (Concord) Ltd. (Respondent); Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Belmont Drywall and Acoustics Ltd. and Belmont Drywall (Concord) Ltd. and Montebello Drywall & Acoustic Systems Inc. (Respondents); United Brotherhood of Carpenters and Joiners of America, Local 785 (Applicant) v. Belmont Drywall and Acoustics Ltd. and Belmont Drywall (Concord) Ltd. and Montebello Drywall & Acoustic Systems Inc. (Respondents) (Withdrawn)

**1409-96-G:** International Union of Elevator Constructors, Local No. 90 and Ed King (Applicant) v. Otis Canada Inc. (Respondent) (Dismissed)

**1700-96-G:** International Brotherhood of Painters & Allied Trades, Local 1494 (Applicant) v. Basile Interiors Ltd. (Respondent) (Granted)

**1969-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Tacc Construction Co. Ltd. (Respondent) v. The Metropolitan Toronto Sewer and Watermain Contractors' Association (Intervener) (Withdrawn)

**2113-96-G:** Metropolitan Toronto Sewer and Watermain Contractors' Association and TACC Construction Co. Ltd. (Applicant) v. Labourers' International Union of North America, Local 183, Alfonso Villano, Giuseppe Villano and Secondino Villano (Respondents) (Withdrawn)

**2119-96-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Vandenburg Contracting (1982) Ltd., 751836 Ontario Inc. (Respondent) (Granted)

**2232-96-G; 3369-96-G:** International Union of Bricklayers and Allied Craftsmen, Local 28 (Applicant) v. Central Terrazzo & Tile of Sudbury Limited and Benedetti's Cement & Tile (Respondents) (Withdrawn)

**2328-96-G:** International Brotherhood of Painters and Allied Trades District Council 46 (Applicant) v. Lesniewski Painting Ltd. (Respondent) (Granted)

**2397-96-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Magine Contractors Inc. and/or Magine Contractors (1994) Inc. (Respondents) (Granted)

**2619-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Bloomington Landscaping (Respondent) (Endorsed Settlement)

**2654-96-G:** International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Cablecom International Network Cabling Inc. (Respondent) (Withdrawn)

**2796-96-G:** Labourers' International Union of North America Local 837 (Applicant) v. Dufferin Construction Company Limited (Respondent) (Granted)

**3150-96-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Spurr Bros. Ltd. (Respondent) (Withdrawn)

**3184-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local 221 (Applicant) v. 1212917 Ontario Ltd. c.o.b. as GDS Building Systems (Respondent) (Granted)

**3253-96-G; 3254-96-G; 3255-96-G; 3256-96-G:** Carpenters and Allied Workers Local 27 United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ideal Railings Limited (Respondent) (Granted)

**3349-96-G:** International Union of Bricklayers and Allied Craftsmen Local 2, Ontario (Applicant) v. City of Toronto, Dept. of Public Works (Respondent) (Withdrawn)

**3494-96-G:** United Brotherhood of Carpenters and Joiners of America Local 2041 (Applicant) v. Carleton Acoustic Construction Inc. (Respondent) (Endorsed Settlement)

**3517-96-G:** Labourers' International Union of North America Local 837 (Applicant) v. Triple "R" Demolition (Respondent) (Granted)

**3624-96-G:** International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Q-Tech Limited (Respondent) (Granted)

**3672-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Aspen Concrete & Drain Inc. (Respondent) (Granted)

**3711-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 508 (Applicant) v. S & E Mechanical, a division of 46177 Ontario Inc. (Respondent) (Granted)

**3742-96-G:** Labourers' International Union of North America, Local 1059 (Applicant) v. Raposo Construction Limited (Respondent) (Endorsed Settlement)

**3749-96-G:** Sheet Metal Workers' International Association, Local 269 (Applicant) v. Provincial Industrial Roofing & Sheet Metal Co. Ltd. (Respondent) (Withdrawn)

**3750-96-G:** Sheet Metal Workers' International Association, Local 537 (Applicant) v. Calorific Construction Limited (Respondent) (Granted)

**3805-96-G:** International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Applicant) v. H.L.O. Iron and Manufacturing Co. Ltd. (Respondent) (Endorsed Settlement)

**3835-96-G:** International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 (Applicant) v. Ryco Alberici (Respondent) (Withdrawn)

**3902-96-G; 3904-96-G; 3906-96-G:** International Brotherhood of Electrical Workers Local 353 (Applicant) v. D.J. Charlton Powerline Construction Ltd. (Respondent); International Brotherhood of Electrical Workers Local 353 (Applicant) v. Centennial Electric Limited (Respondent); International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. An-Dell Electric Ltd. (Respondent) (Withdrawn)



**3962-96-G:** Sheet Metal Workers' International Association, Local 504 (Applicant) v. Ontario Hydro (Respondent) (Withdrawn)

**4040-96-G:** International Union of Operating Engineers, Local 793 (Applicant) v. Sutherland-Schultz Limited (Respondent) (Withdrawn)

**4047-96-G:** Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Venture Interiors Ltd. (Respondent) (Granted)

**4139-96-G:** United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Trafalgar Mechanical Inc. (Respondent) (Withdrawn)

**4164-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Maple Drain & Concrete Inc. (Respondent) (Granted)

**4179-96-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Power Station Construction (A Division of 1096748 Ltd.) (Respondent) (Withdrawn)

**4182-96-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. John W. Baldwin Electric Company Limited (Respondent) (Withdrawn)

**4183-96-G:** International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Canber Electric Inc. (Respondent) (Withdrawn)

## **APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION**

**3186-90-U:** Bertrand F. Bennett (Applicant) v. United Brewers Warehousing Provincial Board (Respondent) v. Brewers Retail Inc. (Intervener) (Dismissed)

**0372-95-G:** Drywall Acoustic Lathing and Insulation Local 675 (Applicant) v. Torino Drywall Company Ltd. (Respondent) (Denied)

**2602-95-U:** Robert Joffrey Savage (Applicant) v. London and District Service Workers' Union, Local 220, University Hospital (Respondents) (Denied)

**3295-95-G:** Drywall Acoustic Lathing and Insulation Local 675 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Torino Drywall Co. Ltd. (Respondent) (Denied)

**0018-96-R; 0019-96-G:** Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Global Mechanical Ltd., Intercontinental Plumbing and Fire Protection Co. Ltd., Dynamic Power Excavating Ltd., IPJ Investments Ltd. (Respondents) (Dismissed)

**0091-96-U:** Louis Martin (Applicant) v. John Haggis Business Manager, I.U.B.A.C. Local 5, (Respondent) (Dismissed)

**2864-96-R:** Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Imperial Trim Supply & Installation (Respondent) (Dismissed)

**3172-96-G:** Labourers' International Union of North America, Local 183 (Applicant) v. Andrew Paving & Engineering Ltd. (Respondent) (Dismissed)







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